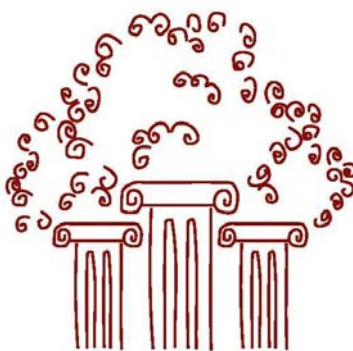
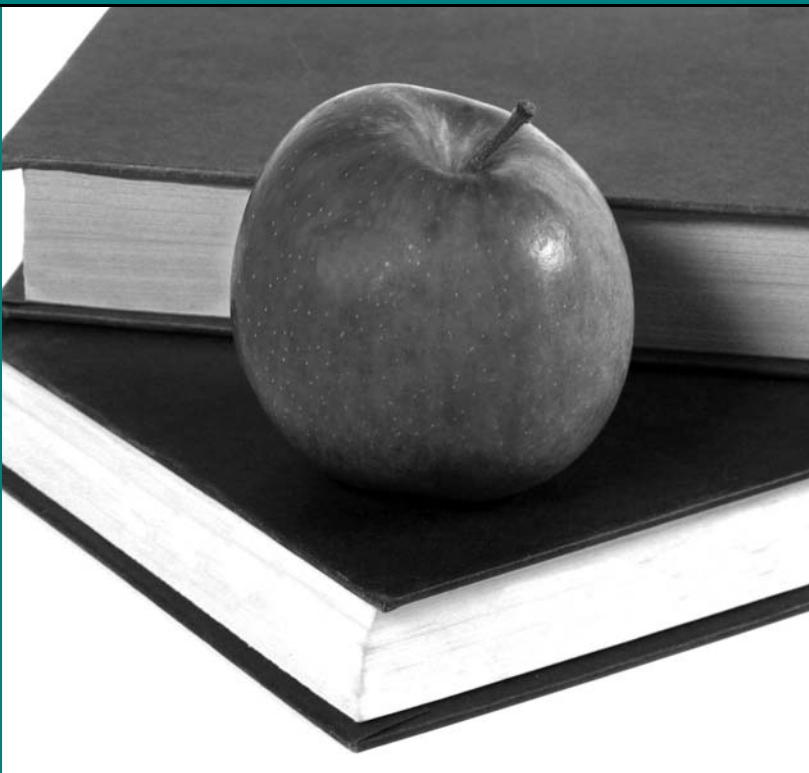


FULL STOMACHS ~ FULL MINDS

How New Mexico Public Schools
Can Feed More Children for Less Money

Summer 2009



New Mexico
Appleseed

A MESSAGE FROM THE EXECUTIVE DIRECTOR

Once in awhile, if we are paying attention, we encounter a seemingly small problem that turns out to affect a huge number of people. And, if we are very lucky, that problem will have definable and manageable solutions. The Albuquerque Public School's Alternative Lunch policy turned out to be one of those small plumes of smoke signaling a large state-wide brush fire. I hope the "Full Stomachs ~ Full Minds" report not only helps to put out the fire, but stops it from happening again.

When I first read about the Alternative Lunch policy promoted by the Albuquerque Public School district, I was torn. The policy gave children whose parents/guardians owed the school money for past lunches an alternative lunch of cold cheese sandwiches and milk. On one hand, the school had a debt to collect and had been generous in allowing children to charge meals on days when they had no money – hence the debt. On the other, the children receiving the alternative lunch were being punished and humiliated for something over which they had no control: whether or not their parents paid the bill.

As I delved further into the issue, it was clear that the cheese sandwiches were merely a symptom of a larger ill: the school systems in New Mexico were, for the most part, implementing the National School Lunch Program (NSLP) such that they were losing money, leaving federal money on the table while hungry children went unfed. As can be the case in states like ours, when the Public Education Department, the school boards, the superintendents and the food service workers are all stretched thin just trying to cobble together healthy meals for New Mexico's children, they often do not have the resources to identify better practices that would make their jobs easier, save money and/or feed more children. That is where an organization like New Mexico Appleseed can come in.

"Full Stomachs ~ Full Minds" is not a discussion of the much smaller issue of the validity of the "cheese sandwich" policy. It is instead a series of evidence-based and legally substantiated recommendations for either specific changes or further study to dramatically improve the school lunch program in New Mexico. Each of the recommendations serves two main purposes: to feed more of our children and to put more money into our schools. If the state agrees to the "win-win" recommendations proposed herein, it would both impact tens of thousands of New Mexico children and save the schools untold amounts of money.

Clearly, this report is merely a starting point. As New Mexico Appleseed's role is to work on systemic solutions to issues disproportionately impacting the state's underserved, we remain committed to the issues of education and hunger. We will continue to investigate the issues herein and are available for further research and collaboration.

Sincerely,

Jennifer Ramo

Executive Director, New Mexico Appleseed

ACKNOWLEDGEMENTS

The following report was largely researched and written by the wonderful lawyers at *Skadden, Arps, Slate, Meagher & Flom* in New York, who devoted hundreds of hours to the project, treating New Mexico's children as their own clients. *Huron Consulting Group* did a remarkable economic analysis examining the benefits of eliminating the reduced price lunch category. Also contributing was *O'Melveny & Myers*, which completed an excellent memo disabusing us of several misconceptions about federal funding and how it is channeled to New Mexico. *Brownstein, Hyatt, Farber, Shreck* lent a fresh and discerning eye to the report when it needed a fresh eye. We firmly believe that the recommendations in this report, if implemented, will help feed possibly tens of thousands more children in New Mexico, providing a meal they may not otherwise receive.

Specifically, we would like to thank:

Skadden Arps:

Shari Pire, Veronica Bisek, Veronica Di Camillo, Joerg Hans Herwig, Kimberly Harris, Keira McCarthy, Resa Schlossberg, Tess Felfe, Noah Levin and Pro Bono Partner and national Appleseed board member Ron Tabak

O'Melveny & Myers:

Tom Jerman, Kristina Medic, Leanna Albrecht and national Appleseed board member Evelyn Becker

Huron Consulting Group:

Chris Apicerno, Kyle Featherstone, Rebecca Velez and national Appleseed board member Natalia Delgado

Brownstein Hyatt:

Kyle Armstrong and New Mexico Appleseed board member Bonnie Paisley

I would like to take the opportunity for a special thank you to Jeremy Cook at national Appleseed, who did a fabulous job editing and formatting the report and went through many drafts without complaint. As well, I am thankful for the support of Betsy Cavendish, Annette LoVoi and Jordan Vexler at national Appleseed in securing our wonderful pro bono partners.

ABOUT NEW MEXICO APPLESEED

New Mexico Appleseed is part of a network of 16 public interest justice Centers in the United States and Mexico. The Appleseed Network is dedicated to building a just society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest.

New Mexico Appleseed uncovers and corrects local injustices and barriers to opportunity through legal, legislative and market-based structural reform. The Center's present focus is on hunger in New Mexico and New Mexico's public education system.

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**Ms. Schifani, due to a conflict of interest, recused herself from participation in the creation of this report.*

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INTRODUCTION & EXECUTIVE SUMMARY

Why make changes to New Mexico's School Lunch Program?

Every day in New Mexico, student achievement and nutrition are in states of emergency. With families losing jobs and wages, more and more children are going to school malnourished, some having eaten nothing at all. School districts struggle to educate and support their students with fewer available resources. Slashed budgets mean frustrated teachers, less money for books and supplies, and little capacity to subsidize a federal lunch program that already falls short of the school districts' costs for each lunch served.

**New Mexico Appleseed
presents "win-win"
opportunities to feed more
children at a lower cost.**

No expensive study is necessary to show that hungry children cannot pay attention in class.

Nor is one necessary to show that New Mexico's school districts are in dire need of financial support and help to accomplish their goals.

This report evaluates options available to school, district and state administrators that will help to feed more children at a lesser cost, thereby reducing hunger and the toll it exacts both socially and academically. New Mexico Appleseed's recommendations point to increased profitability for schools and decreased hunger and food insecurity for children.

New Mexico's Public Education Department and the school districts across the state have the opportunity to make changes that would both improve their fiscal bottom lines and feed more hungry children. In this economy with both school and home budgets stretched, it is imperative that we take advantage of federal funding for school lunches and regulations that were designed to ease the strain on schools while ensuring that children can fuel their brains with healthy food while they are at school.

Who has the authority to make the recommended changes?

While each Local Educational Agency (usually the same as a district) has the authority to make appropriate changes to applicable school lunch policies, the ultimate authority to make the recommended changes lies with New Mexico's Secretary of Education.

**New Mexico's Secretary of Education has the final legal
authority to make all recommended changes. Districts, though,
may also make such changes on their own.**

EXECUTIVE SUMMARY: MAJOR RECOMMENDATIONS

Many of New Mexico Appleseed's proposals are turn-key in that they can be implemented with little financial risk to the state or district. The most important of these modifications include:

- 1. Increase profitability and feed more students by maximizing student enrollment in the lunch program.**
- 2. Improve the Direct Certification process for students by:**
 - a. Adding Temporary Assistance for Needy Families (TANF), Medicaid and State Children's Health Insurance Program (SCHIP) as bases for automatic enrollment**
 - b. Taking advantage of the temporary certification option**
 - c. Implementing, if feasible, a statewide data matching system**
 - d. Completing a Direct Certification match more frequently than twice a year**
- 3. Maximize the pool of eligible students by:**
 - a. Encouraging local school officials to complete individual applications where necessary**
 - b. Automatically certifying eligibility of a qualifying household with multiple children.**
 - c. Allowing Supplemental Nutrition Assistance Program (SNAP), Food Distribution Program on Indian Reservations (FDPIR), or TANF letters to enroll students in lieu of proof of income.**
 - d. Improving outreach to eligible parents**
- 4. Engage in appropriate debt collection practices, including mailing notices of debt and eliminating programs that punish those other than the debtor.**
- 5. Increase the number of Provision 2 and 3 schools in New Mexico by lowering the baseline percentage of students on free or reduced price lunch, at which a school begins to offer free lunch universally. New Mexico Appleseed recommends lowering this from 85-90 percent to 75 percent.**
- 6. Ensure that all schools deny or enroll children within the mandatory 10-day period from when they initially apply for NSLP benefits.**
- 7. Eliminate reduced price lunches and offer those children free lunches to eliminate unnecessary overhead costs.**

A NOTE ON LANGUAGE:

This report uses the word "profitable" and "profitability" to convey the potential for schools to dramatically increase their income from the NSLP. While the words "cost-effective" or "cost-effectiveness" could surely have been used, "profitable" seemed to more accurately reflect the degree of improvement the schools could expect to experience upon adopting the recommended policy changes. The NSLP was not created to produce an income stream for schools, but as a means to get food to hungry children who might not be able to afford lunch.

MAXIMIZING BENEFITS UNDER THE NSLP

HISTORY

The National School Lunch Program, founded with the enactment of the National School Lunch Act (NSLA) in 1946, is a federally assisted program that provides low-cost or free meals to students attending nonprofit and public educational institutions. Although not officially established until passage of the NSLA, federal assistance for school lunches dates back to the government's domestic redistribution of surpluses during the Great Depression.¹ School lunch programs were a natural conduit for such redistribution, but following the onset of World War II these surpluses were virtually eliminated, and the federal government began enacting piecemeal legislation to supplement the losses suffered by schools. By 1946, it was clear that more permanent legislation was needed and, as a result, President Truman recommended and Congress enacted the NSLA which established and permanently funded the NSLP, a program aimed initially at addressing the physical deficiencies in young men that resulted from childhood malnutrition.²

Higher NSLP enrollment means more federal resources and higher profitability for school lunch programs.

Over the years, further amendments to the NSLA and the Child Nutrition Act of 1966 (CNA) have expanded, revised and modified the NSLP's features and requirements. In addition, further legislation, such as the Healthy Meals for Healthy Americans Act of 1993 and the Child Nutrition and

WIC Reauthorization Act of 2004, were enacted to address the nutritional aspects of the NSLP and underprivileged children's accessibility to its benefits.³

WHO IS ELIGIBLE FOR FREE OR REDUCED PRICE LUNCH?

Federal regulations specify that children from families with incomes at or below 130 percent of the poverty level are eligible for free meals.⁴ Students from families with incomes between 130 percent and 185 percent of the poverty level are eligible for a reduced price lunch, the price of which must not exceed 40 cents.⁵ To provide some context, for the 2008-09 school year, a child from a household with four members and a household income of \$27,560 qualifies for a free lunch; a child from a four-member family with a household income of \$39,220 qualifies for a reduced price lunch.⁶

In order to ensure state and LEA compliance with the above requirements, federal regulations mandate that each participating state and LEA enter into an agreement specifying the foregoing parameters.⁷ For instance, each state LEA (including New Mexico's LEAs) must expressly agree to "serve lunches free or at a reduced price to all children who are determined by the local education agency to be eligible for such meals under 7 C.F.R. Part 245."⁸

HOW SCHOOLS AND LOCAL EDUCATIONAL AGENCIES BENEFIT FROM PARTICIPATION:

A. An increase in school lunch participation rates increases available federal resources, which in turn increases profitability for the school districts. Participation in the NSLP, both at the state and at the local or district-levels, is entirely voluntary.⁹ However, participating states

and schools are entitled to certain federal benefits. Federal benefits to which participating schools are entitled include:

- basic cash reimbursement for all lunches served;¹⁰
- special cash assistance for free and reduced price meals served;¹¹
- entitlement and bonus commodities;¹² and
- state administrative funds.¹³

B. When States offer subsidies, schools benefit further. In addition to these federal subsidies, some states make available state-specific benefits through legislative appropriations. For instance, California offers economic incentives to encourage participation, providing participating LEAs with additional subsidies for each NSLP lunch served.¹⁴ New Mexico, however, does not have a state mandate for school lunch programs and therefore does not provide any additional subsidies or per meal reimbursements.¹⁵ At the local level, in addition to any federal benefits, New Mexico's participating schools are funded through each student's payment for full and/or reduced price lunches, as well as any school-specific contributions.¹⁶

WHO HAS AUTHORITY TO MAKE THE NECESSARY CHANGES?

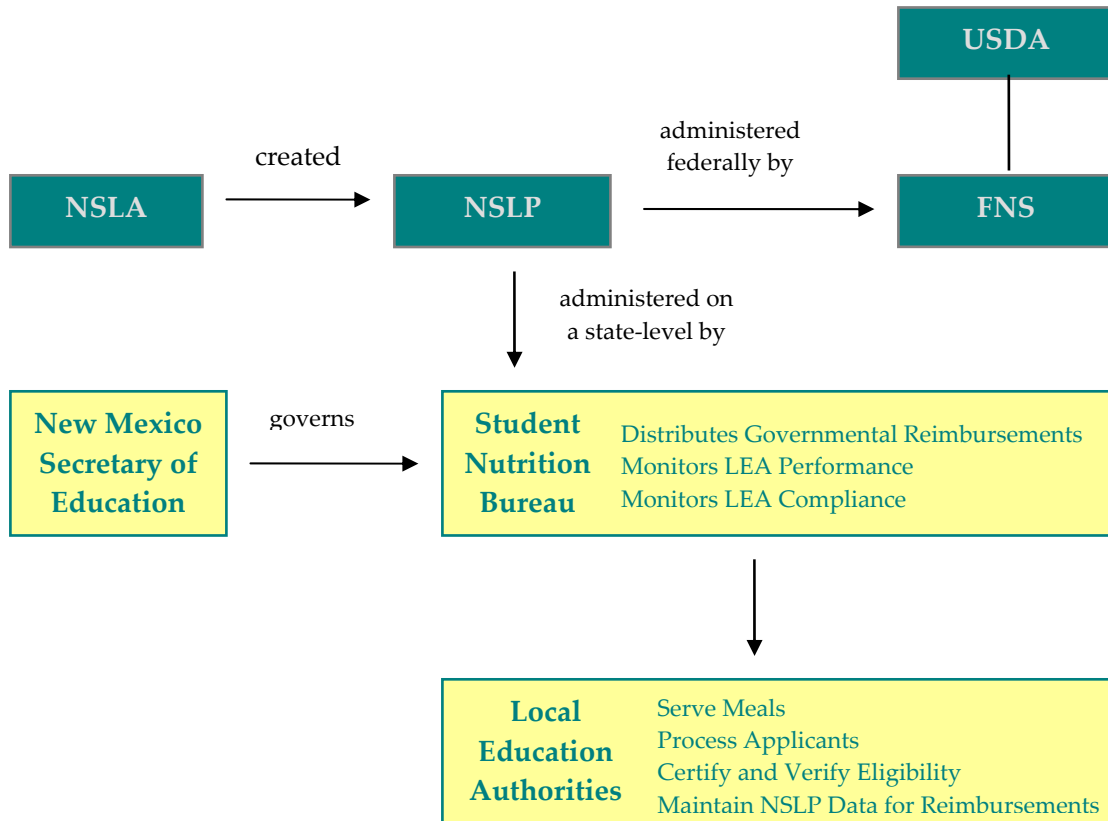
One of the most important questions in this analysis concerns who has the authority to improve the current system. While each LEA has the authority to make many of the changes suggested in this report, the ultimate authority lies with New Mexico's Secretary of Education ("the Secretary") and the Executive Branch. This section examines the chain of administration and authority over the NSLP.

At the federal level, the United States Department of Agriculture (USDA) administers the program through its Food and Nutrition Service (FNS), which provides participating states with reimbursements, coordinates NSLP policy, provides technical assistance and oversees the state-designated educational agencies' administration of the NSLP.¹⁷

New Mexico's Secretary of Education has the ultimate authority to determine and implement changes to school lunch policies statewide.

Participating states work with school districts to administer the lunch program under agreements entered into by the applicable state education agency or the FNS regional office and the LEA. The state agency manages the NSLP's fiscal responsibilities including distributing government reimbursements, monitoring LEA performance and compliance (nutritional and otherwise) and providing technical assistance.¹⁸ In addition to actually serving the meals, LEAs are responsible for processing applications, certifying and verifying eligibility for free or reduced price lunches and maintaining NSLP data for reimbursement claims.¹⁹ The legal framework described above, as applied to New Mexico, can be illustrated as shown below:

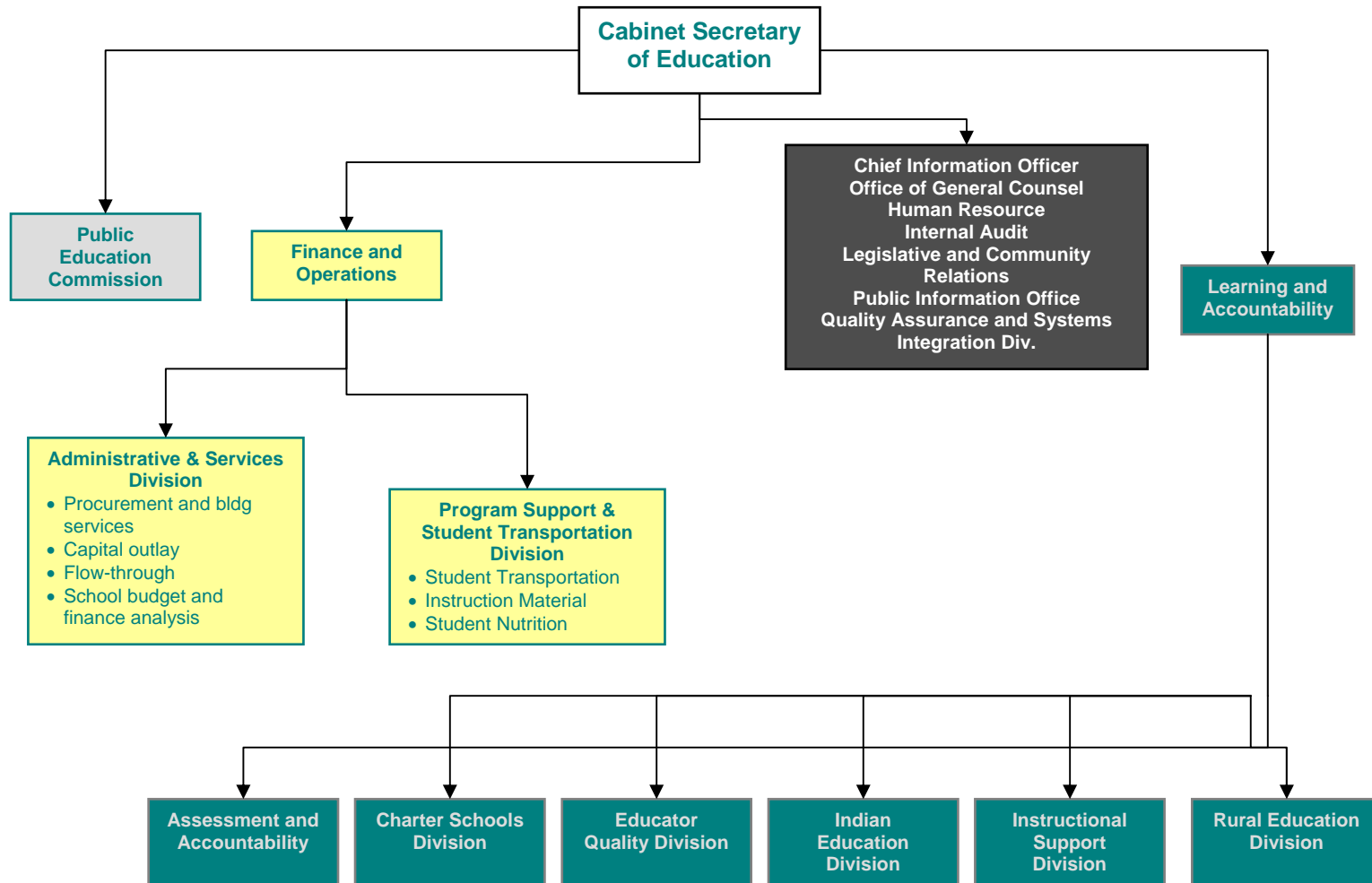
LEGAL FRAMEWORK FOR THE NSLP



Additionally, pursuant to the Executive Reorganization Act and the Public Education Department Act,²⁰ the Secretary is empowered to take any action not explicitly exempted from the Secretary's authority.²¹ Because regular determination of the New Mexico students eligible for free or reduced price lunches is not carved out of the Secretary's ambit of authority, the Secretary can propose implementation of reforms to address the SNB's current administration of the NSLP in New Mexico.²² While each LEA also has the ability to make many changes to their school lunch programs, the Secretary has the ability both to set forth statewide policies and to change local ones.

The Secretary is the administrative head or governing authority of New Mexico's Public Education Department (PED) and is appointed by the Governor.²³ The Secretary oversees the 11 statutorily authorized divisions of the PED.²⁴ The following page shows an organizational chart illustrating the relationships among the parties in New Mexico's Public Education Department:

NEW MEXICO NSLP OVERSIGHT



SPECIFIC RECOMMENDATIONS

I. Boost Profitability by Maximizing Student Enrollment Numbers

The key to enhancing the profitability of the school lunch program is to increase the number of students participating. On the surface, the costs involved with serving school lunches appear prohibitive. School districts already allocate a significant portion of their funding towards food service. For its estimated 87,000 students, APS budgeted \$27,610,246 for food services but anticipates receiving only \$26.2 million in revenues from food services during the 2008-09 school year.²⁵

In response to rising food costs and the current economic climate, school districts are implementing various cost reduction mechanisms. But even the most effective cost reductions do not have nearly the impact resulting from an overall increase in participation. A brief overview of the economics behind school lunches demonstrates why.

Schools serving free or reduced lunches to 60 percent of the student body qualify for higher federal reimbursement rates.

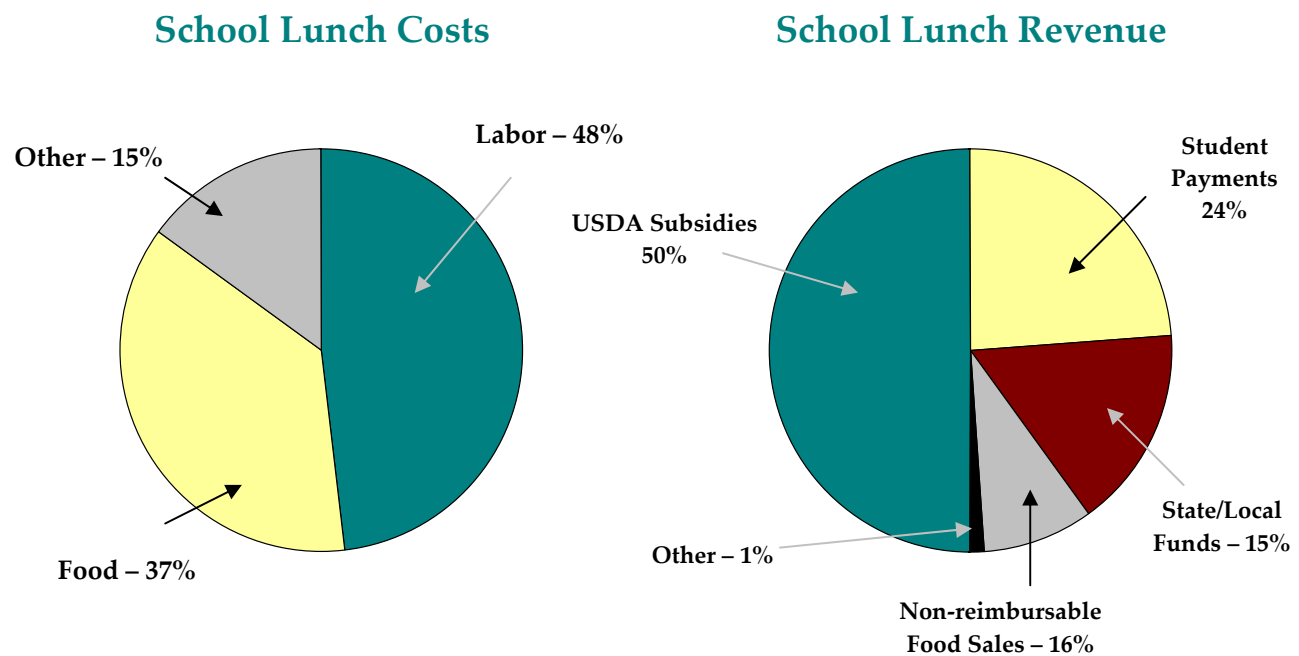
The NSLP funds approximately 30 million lunches per day at a cost of \$8.7 billion a year.²⁶ Of the 30 million students served in 2007, approximately 15 million qualified for free lunches, 3 million paid a reduced price and 12 million paid full price.²⁷ Schools providing free and reduced price lunches receive federal reimbursements, which come in the form of monetary reimbursements and donated commodities. Donated commodities account for about 12 percent of total food cost, or approximately \$0.175 per meal. Schools in which 60 percent or more of the student body receives a free or reduced price lunch are entitled to higher reimbursement rates.²⁸ The federal reimbursement rates are the same for all states (except Alaska and Hawaii, which have higher rates to compensate for higher food prices in those states). Effective from July 1, 2008 to June 30, 2009, these rates are as follows:²⁹

Meal Type	Federal Reimbursement (Less than 60%)	Federal Reimbursement (60% or greater)³⁰
Free	\$2.57	\$2.59
Reduced Price	\$2.17	\$2.19
Paid	\$0.24	\$0.26

***These figures will be modified on July 1, 2009.**

In 2008, the USDA's Office of Research, Nutrition and Analysis (ORNA) conducted a cost study of a nationally representative sample of more than 350 schools to determine production costs of

school lunches. The study analyzed costs from the 2005-06 school year. The full cost analysis conducted by ORNA indicates that, on average, the total cost attributable to a school lunch is \$2.91.³¹ On average, the aggregate of all school lunch revenues (generated from federal reimbursements and other sources) exceeds the full cost of a lunch by 16 percent.³² The composition of school lunch costs and revenues are as follows:



Thus, given that school lunch programs, on average, have profitable operations, and taking into account the significant advantages from economies of scale in meal production, the optimal approach to boost profitability is to increase participation rates. Some of the primary ways to do so are discussed below, but note that even minor changes at the school level – improving food preparation methods, adjusting lunch schedules to account for volume and engaging in promotional activities such as food tastings, games and parties – may lead to an increase in participation.³³

A. Improve the Direct Certification Process

Direct Certification means certain categories of children are automatically enrolled in the NSLP saving the schools the expensive administrative costs associated with soliciting and processing each application individually. It also saves those children's families from having to navigate the sometimes confusing application system and pay for lunches while they await approval. It is in the individual application process where schools lose money: children get lost in the system and uncollectible lunch debts mount. Just as participation is the key to profitability, improving

the direct certification process is perhaps the single most important factor in ensuring participation.

A USDA pilot study conducted in the 2001-02 school year found that requirements for up-front documentation of income were associated with reduced rates of certification among eligible students.³⁴ Current regulations require verification of up to three percent of applications; in SY2000-01, 34 percent of households selected for verification lost benefits because they failed to respond to requests for documentation of eligibility.

Direct certification eliminates high administrative costs for schools and burdensome hurdles for children and their families.

Through the NSLP, any child that attends a participating school is entitled to a school lunch. To ensure that these lunches are provided, the NSLA expressly requires participating LEAs to provide eligible children with free and reduced price meals.³⁵ There are

two routes by which a child may benefit from this program: either, (1) the child's family must submit an application to the applicable LEA indicating such family's eligibility status (based on either income or categorical eligibility), or (2) a student must be "directly certified."

Instead of requiring all households to submit an application for students to receive free school lunches,³⁶ direct certification allows students to qualify automatically.³⁷ For purposes of direct certification, public authorities in various states rely on data from SNAP, FDPIR and/or TANF programs³⁸ to indicate that the respective family lives on an average annual income at or below 130 percent of the applicable federal poverty guidelines. In New Mexico, data from SNAP and FDPIR, but not TANF, is used to directly certify students to receive free lunches. The SNB directly certifies the state's children for free and reduced price lunches twice annually prior to the start of the academic year.

Although direct certification systems vary by state and LEA, by reducing the need for household applications and attendant paperwork all such systems lower costs and increase efficiency while also increasing the percentage of students certified for free meals.³⁹

The procedure for direct certification is outlined in and governed by the NSLA. 7 C.F.R. 245 provides guidance on (i) the use of the temporary certification procedures for children whose families suddenly require financial assistance and immediate financial relief; (ii) the appropriate level and method of direct certification; (iii) the frequency at which direct certification must be conducted; and (iv) Provision 1, 2 and 3 programs, which certify all children in the respective school district to receive free lunches for certain periods of time. These four areas comprise the core federal framework of direct certification and are discussed further throughout this report.

All direct certification systems lower costs thanks to higher efficiency.

Note that even with full implementation of direct certification in New Mexico, there will still be a need for some household applications. Children from households with incomes between 130 percent and 185 percent of the federal poverty level are eligible for school meals at a reduced price. Direct certification, however, is not intended to reach children eligible for these reduced price meals. Additionally, some households with incomes at or below 130 percent of the federal poverty level do not participate in SNAP.⁴⁰ Therefore, children from those households are income-eligible for free school meals but will likely fail to be identified through direct certification, and it will be necessary to reach these children through the normal application process.

1. Add TANF, Medicaid and SCHIP as Bases for Categorical Certification

In addition to following various income guidelines for determining eligibility,⁴¹ the NSLA also describes certain children who are "categorically," or automatically, eligible to receive free lunches. These children include those participating in SNAP, FDPIR, TANF and Head Start, as well as certain Even Start enrollees, migrant children under the Elementary and Secondary Education Act of 1965, runaway children receiving assistance through the Runaway and Homeless Youth Act and homeless children under the McKinney-Vento Homeless Assistance Act.⁴² An LEA takes the data pertaining to categorically eligible children and uses it to determine which of these children attend a school in its district. LEAs use broad discretion to certify directly all categorically eligible children as well as children receiving Medicaid or State Children's Health Insurance Program ("SCHIP") benefits.⁴³

Federal legislators, in fact, originally considered mandatory direct certification of *all* categorically eligible children.⁴⁴ Currently, however, federal law requires participating schools to directly certify children only from families participating in SNAP;⁴⁵ although the law *encourages* direct certification of students on the basis of TANF and FDPIR participation.⁴⁶ New Mexico directly certifies its students based on SNAP and FDPIR participation, but does not directly certify its students based on TANF participation.⁴⁷ To ensure the broadest participation, New Mexico should add data from TANF as well as from Medicaid and SCHIP, as bases for its direct certification process. There are more than 15,500 children on TANF in New Mexico.⁴⁸ While we do not know the number of those children already enrolled in school lunches, adding TANF alone to the direct certification process would mean that the administrative cost savings to the schools and the removal of the personal cost of verifying income would clearly be significant.

2. Take Full Advantage of Temporary Certification

Under current economic conditions, temporary relief may be the most effective tool available for addressing the needs of students whose families are suffering temporary and/or sudden loss of income while ensuring that a district is reimbursed for free or reduced price meals. Federal guidelines stress the importance of granting temporary approval when a household's need for assistance is temporary, and federal regulations permit LEAs to offer temporary approval for

free or reduced price lunches for children experiencing such dire economic circumstances. These guidelines specifically identify the following economic conditions for which eligible children should be temporarily (if not otherwise) approved:

- zero income or a temporary reduction in income;
- temporary lay-offs or minor injuries temporarily preventing a household member from working;
- strikes (voluntary work stoppages); or
- temporary disability.

Temporary certification allows children to qualify for emergency meals in the event of a household's sudden loss of income. It also ensures that schools are reimbursed for the cost of those meals.

When temporary approval is granted, the LEA is expected to periodically review a household's circumstances to determine whether its children are still eligible for free or reduced price lunches. It should be noted that temporary approval could avoid many of the unpaid lunch debt issues

▪ **Encourage LEAs to Use Temporary Certification for the Maximum Allowable Time**

The NSLA recommends that LEAs grant free or reduced price meals to school children for a household that reports suffering a temporary reduction in income. Within this framework, LEAs are given the discretion to presume for a period of up to 45 days that children living in such households are entitled to free or reduced price lunches.⁴⁹ Following the expiration of this 45-day period, if the household's financial condition has not improved sufficiently, LEAs may extend the temporary certification and reevaluate the situation after another period of time. After the expiration of such an extension, LEAs are responsible for determining eligibility for free lunches.

Because the granting of temporary relief lies in the sole discretion of the LEAs, it is an effective and powerful means of helping children in households affected by the current economic crisis. It is also an excellent tool to ensure that schools are reimbursed for these lunches before children can be officially enrolled in the NSLP. To ensure temporary certification is applied effectively on an LEA-level, New Mexico state agencies should encourage LEAs to use the temporary certification procedure and apply it for a period of at least 45 school days.

▪ **Make Households Aware of Income-Reduction Eligibility**

In the current economic climate, a number of parents may fall victim to sudden unemployment during the course of a school year. Temporary Certification will alleviate some of the economic stress suffered by these households. To benefit from temporary certification, families must report their unemployment status to LEAs. Federal regulations⁵⁰ require information on the free school lunch program, distributed at the beginning of each school year to all parents of students in school districts participating in the program, to contain guidance for parents regarding the right to apply for free school lunches in the event of sudden loss of employment.

Moreover, federal regulations require unemployment agencies, as well as major employers contemplating large layoffs in their respective geographic areas, to obtain the aforementioned information and guidance and to

Adding information about NSLP eligibility to approval letters for other assistance programs is one of the easiest ways to increase enrollment.

distribute it to parents who become unemployed.⁵¹ Thus, the state should ensure that families know that when they suffer from income reductions, they can apply for temporary assistance for their entire family through SNAP, FDPIR and/or TANF and free lunches for their children by applying for Temporary Certification directly through the LEA. New Mexico should take the following steps to increase awareness of this opportunity:

- (a) ensure that each LEA is distributing information, in multiple languages, that allows parents who may be eligible for temporary assistance;
- (b) add information about eligibility for free lunch to approval letters for SNAP, FDPIR and TANF; and
- (c) ensure that any companies anticipating large layoffs and any unemployment agencies offer information about Temporary Certification.

3. Study Feasibility of a Statewide Computerized Matching System

States matching children with eligibility on a statewide level significantly improved the number of children enrolled in NSLP through direct certification.⁵² Statewide direct certification is most effective when the state has resources at the state-level to perform the match, as they already have the list of SNAP, TANF and FDPIR participant children. This creates a more centralized process, which can make it more efficient and ease the burden off of local school districts. The state would just provide districts with a list of students that are already certified for free lunch, eliminating any work relating to direct certification at the district-level. However, a potentially large barrier to state-level computer matching is the need for an electronic student enrollment database available to the state agency that would perform the match. In states where there is no such database of students (with student-identifiers), a statewide system will not be the best option unless such a database is created. In such a case, the next best thing would be for the state agency to export the list of students receiving the SNAP, TANF or FDPIR benefits to the local school district, which would perform the match at the local level based on their student enrollment lists

There are three primary methods used by various states for conducting direct certification:

1. a data matching method, which utilizes computer software to match data compiled from state authorities;
2. a similar method using data from school district authorities; or

3. a letter-based method,⁵³ which requires state agencies to send letters to households participating in SNAP, FDPIR and/or TANF, informing these families that their children are eligible for free school meals and asking them to forward the letter to the respective LEA.⁵⁴

The FNS recognizes that mandating the statewide use by all school districts of data matching performed at the state-level is the most effective method of direct certification.⁵⁵ The FNS claims that this method allows for 74 percent of eligible children to be directly certified.⁵⁶ By contrast, state-level data matching applied on a voluntary basis results in the direct certification of only 51 percent of all eligible children. The FNS also states that data matching performed at the district-level results in the direct certification of 63 percent of eligible children and that the letter-based method results in the certification of only 52 percent.⁵⁷

New Mexico presently uses district- (or LEA-) level data matching. In New Mexico, SNAP and FDPIR benefit information, which is provided by the relevant state agency to each LEA based on county and zip code, is matched with children in

A statewide data matching system would help qualify needy children for free and reduced price lunches more efficiently.

databases maintained by each LEA.⁵⁸ The matching process takes place in July of each calendar year.⁵⁹ As statistically demonstrated, New Mexico could increase the number of children directly certified for free school lunches by switching from district-level data matching to mandatory state-level data matching. State-level matching promotes statewide uniformity, efficiency, greater benefit to poor New Mexican children and ultimately cost-savings to LEAs by allowing for the use of a centralized process that creates matches based on statewide data, instead of requiring each school district to control the process and develop its own matching system.

To confirm that a statewide system would be more cost-effective than a district-level system, New Mexico should assess: (a) what systems already exist that can be used as a platform for data matching and distribution, (b) to what extent the current system will have to be modified,⁶⁰ and (c) which method of matching requires fewer resources to operate, taking into consideration state and district-level costs.⁶¹

For state-level data matching to be feasible, a state must have the personnel and technology to perform the match and distribute the results.⁶² Wisconsin, for instance, implemented state-level matching for direct certification, which uses the state SNAP agency to match student records collected from school districts.⁶³ District-level matching, in contrast, requires that each school district be capable of performing matches.

Some states have had success with reliance on a district-level system. Arizona, for example, uses an online system that gives school districts real-time access to SNAP and TANF data, which districts use to perform the match based on student name, date of birth and either SSN or

mother's first name. Arizona's system resulted in direct certification of over 95 percent of all SNAP and TANF children approved for free meals.⁶⁴

4. Increase Frequency of Direct Certification

With the number of families seeking government assistance growing daily and parents losing their jobs, there must be a way to get children enrolled in free lunch on a more frequent basis. In addition to utilizing Temporary Certification, New Mexico must improve the frequency with which direct certification is conducted. While the NSLA prescribes that children's eligibility for direct certification has to be examined, at a minimum, "at or about the beginning of the school year,"⁶⁵ the same provision of the NSLA encourages⁶⁶ LEAs to process direct certification matches "at any time during the school year."⁶⁷ The FNS suggests that monthly or even real time synchronization be conducted, if "feasible," in the respective state.⁶⁸ Feasibility mainly depends on certain factors, such as cost and availability of resources.

Although some school districts conduct direct certification multiple times annually, many conduct it only once at the beginning of the calendar or school year, thereby minimizing the number of children who can participate in the program and the opportunities for the revenues associated with their enrollment. Since many families may become eligible for SNAP, FDPIR or TANF benefits during the school year,⁶⁹ the USDA encourages LEAs to conduct additional direct certification activities to identify newly eligible children throughout the entire school year.⁷⁰ By conducting direct certification activities multiple times annually, LEAs can ensure that children whose families are receiving SNAP, FDPIR or TANF benefits and who fall on hard times will be automatically certified throughout the year without having to wait for the household to complete an application.⁷¹

Different states have implemented varied direct certification systems and conduct direct certification at different intervals. The ability to perform matches as frequently as possible is critical to ensuring the highest participation rates.

Direct certification should be conducted as frequently as possible to ensure that no eligible child must wait to receive free meals and to maximize enrollment for profitability purposes.

Without frequent updates, much of the advantage to using a statewide system is lost. If a state-level system cannot be maintained with the most current possible information, a district-level matching system would likely be preferable because it utilizes more current student records, including new students and those that have changed districts.⁷² In cases where state-level student records are as current as district-level records, however, mandatory state-level data matching will, as statistically shown, yield a better match rate than data matching performed at the district-level.⁷³ This is due to state-level matching performing a single match with entire statewide files of student records and SNAP and TANF records.⁷⁴ District-level matching, on the other hand, requires separating SNAP and TANF data by geographic area, which inevitably

results in sending some of the data to the wrong districts.⁷⁵ Furthermore, state-level matching identifies all possible matches for a given recipient of SNAP and TANF benefits so that the best possible match can be chosen whereas district-level matching may be more likely to result in mismatches of students with common names because the best match is not in the district.⁷⁶

It is critical that, going forward, New Mexico continue to evaluate whatever system is ultimately put in place. For instance, Massachusetts uses an interdepartmental task force that developed the direct certification data matching process to create benchmarks to assess the system's effectiveness. The state then uses those benchmarks to identify any gaps in implementation and to track progress.⁷⁷

▪ **Frequency of Direct Certification: Best Practices in Other States**

New Mexico should, in creating its own data matching system for direct certification, examine how other states have implemented their own systems. The following are selected “best practice” case studies for reference.

Indiana ~ Real-Time Direct Certification

Indiana has been directly certifying children for free school meals since 1990 using a basic computerized data matching model for the first 13 years that involved participating school districts mailing files to the Department of Education, which then conducted the match and mailed the results back to each district.⁷⁸ Because the system was so time-consuming for state staff, in 2003 the Indiana Department of Education developed a web-based interface for the matching process that requires very little state-level staff time for conducting direct certification.⁷⁹

Indiana's direct certification system uses lists of all children aged 1 to 20 receiving SNAP and/or TANF benefits, provided to the Department of Education from Indiana's Family and Social Services Administration.⁸⁰ School districts access this data by logging onto a secure Department of Education web portal and matching SNAP and TANF records with a student enrollment list that is either generated by the Indiana Department of Education⁸¹ or uploaded by the school district.⁸² The system uses several student identifiers to conduct matches, including the student's first and last name, date of birth and county of residence.⁸³

Indiana school districts do not collect students' Social Security numbers and therefore cannot use them in the matching process.⁸⁴ To address variations in the spelling of students' first names, the Department of Education uses a function available in its database system that reduces the name to a phonetic string and finds other names with slight spelling variations.⁸⁵ If the first names sound alike, a supplemental match is made using the other three student identifiers and is checked for validity by school districts using other data elements, such as address or parents' names.⁸⁶ Even though not all of Indiana's school districts use their state-level direct certification process, Indiana school districts can still directly certify approximately half of the students who will ultimately be approved to receive free lunch using the standard and supplemental matches.⁸⁷

Washington ~ Daily Direct Certification

Faced with the rising costs of mailing letters to households receiving SNAP or TANF benefits, Washington spent a year developing a computerized state-level direct certification data matching system that was implemented in 2003. The direct certification data matching system is a component of a complex student database Washington developed to comply with the federal No Child Left Behind Act.⁸⁸ Building the database, of which the direct certification program is only a small part, cost approximately \$1 million and required two full time employees over a two-year period.⁸⁹ This direct certification process now costs only \$10,000 annually and school districts throughout the state found that the number of children being directly certified increased significantly after the data matching system was introduced.

Washington's direct certification process costs only \$10,000 annually and has helped to qualify more children for the NSLP.

Washington's student database uses unique student identifiers that include the school district and school name for each student, the student's first and last name, middle initial, birth date, address, gender and several items pertaining to the student's educational status.⁹⁰ The Washington Department of Education matches the students in this database to a data file provided by the Washington Department of Social and Health Services, which identifies all school-age children receiving SNAP or TANF benefits. The Department of Social and Health

Services' list can be searched using any of the identifying information, which facilitates matches even in instances where data has been incorrectly entered. To ensure that a child has been correctly matched using one of the identifiers, districts can use the other student identifiers contained in the database.

Washington's model identifies children for direct certification throughout the school year by using a database maintained by the state education department which is updated as soon as a new student enrolls in a school district. Each night, *all* students in the database are matched against a list of children in households receiving SNAP or TANF benefits, which is provided by the state's welfare agency on a monthly basis. As a result, Washington's model of data matching allows a child receiving SNAP or TANF benefits who changes districts to be directly certified for free lunch the *very next day*. Furthermore, when a household begins receiving SNAP or TANF benefits during the school year, the child is directly certified in one month or less.

Each school district in Washington has access to a secure Internet site, allowing it to view a district-specific list of children who have been directly certified to receive free lunch by the Department of Education. Washington's direct certification system is part of a larger, more complex student database system, and, therefore it is difficult to assess the actual costs incurred in developing the direct certification system.⁹¹

Tennessee ~ Monthly Direct Certification

Tennessee has developed a simpler automated system of direct certification that has been helping districts conduct direct certification matches since 1992.⁹² Tennessee's Department of Human Services provides a data file that includes all children ages 3 through 21 who receive SNAP or TANF benefits. The Department of Education makes these data files available to each school district via the Internet through a secure, password-protected site.⁹³ Each district downloads data for the applicable counties (as a text file that can be converted to a Microsoft Excel file) and electronically matches such data against its attendance database.⁹⁴

Similar to Washington, when conducting a match school districts focus on four data elements: last name, Social Security number, birthday and parent name (or the name of the recipient of the SNAP or TANF benefits).⁹⁵ The only reported state costs associated with this method of direct certification are one hour of labor incurred by the Department of Human Services to prepare the file and one hour of labor incurred by the Department of Education to upload the file.⁹⁶ Although a formal estimate of the costs to school districts has not been conducted, the Department of Education believes that the reduction in administrative burden associated with processing and verifying applications more than offsets the time that districts devote to direct certification.⁹⁷

Massachusetts ~ Quarterly Direct Certification

In 2000, Project Bread, a nonprofit anti-hunger group, received a USDA grant to organize a project to improve access in Massachusetts to federal nutrition programs, including the NSLP.⁹⁸ This effort, now known as the Child Nutrition Access Project (CNAP), resulted in the year-long development and eventual state-wide implementation of a new direct certification data matching system.⁹⁹ CNAP developed a three-way statewide data transfer system among Massachusetts's Department of Education, Department of Transitional Assistance (DTA), which administers SNAP, and the Department of Public Health, which oversees the Special Supplemental Nutrition Program for Women, Infants and Children.¹⁰⁰ The Department of Public Health and DTA use the transferred data to identify families that are potentially eligible for assistance, while the Department of Education uses the data to directly certify children for free lunch.

A switch from mailings to a statewide data matching saved Massachusetts \$39,000 during the 2004-2005 school year.

A study of Massachusetts's system of direct certification¹⁰¹ focused on the data transfer from the DTA, which will also be the focus of the following description. To facilitate direct certification, the DTA provides a data file of all students aged 4 to 19 receiving SNAP benefits to the Department of Education, which

conducts the match using a child's full name and address. The Department of Education also attaches a unique student identifier to each matched file which allows the matches to be sorted and downloaded by each school district over a secure Internet site.¹⁰²

During the 2005-06 school year, 82 percent of school age children in Massachusetts households receiving SNAP benefits were matched using the electronic data match.¹⁰³ Names not matched within the system are sent back to the DTA and those households are sent a letter informing them that they can receive free meals by applying directly to the school district.¹⁰⁴

In addition to measuring the effectiveness of Massachusetts's statewide data matching system in certifying children for free lunch, CNAP also measured its impact on costs. Before the statewide direct certification system was implemented, Massachusetts spent approximately \$52,000 each year mailing letters to each household receiving SNAP benefits.¹⁰⁵ When statewide data matching was implemented in the 2004-05 school year, the cost was reduced to \$13,000.¹⁰⁶

▪ **Increase Effectiveness of Statewide Matching through Supplemental Letters**

Mandatory state-level data matching can be refined by supplementing it with letters to unmatched SNAP, TANF and/or FDPIR children.¹⁰⁷

▪ **Use Multiple Student Identifiers in the Matching System**

Some children receiving SNAP, FDPIR or TANF benefits may not be identified through the matching process due to discrepancies among school records and SNAP, FDPIR and TANF records. However, if several student identifiers are used to create matches,¹⁰⁸ discrepancies or omissions due to incorrectly entered data can be reduced. Having more student identifiers is especially helpful to confirm matches and resolve duplicates where a single student identifier, such as a Social Security Number, is not available. When choosing between state-level and district-level data matching, a state should consider the following:

- whether Social Security Numbers are widely available on the state and/or district-level;
- what other identifiers from school district records are included in state student records and are useful for matching;
- whether state records include district student identification numbers;
- whether districts maintain state student identifiers in their student records; and
- whether the accuracy of the identifiers in the state student records, compared to those kept on the district-level, can be assured.¹⁰⁹

Matching is likely most effective when including children's Social Security Numbers as one of several identifiers.¹¹⁰ However, Social Security numbers cannot be the only identifier as it would eliminate the many children in New Mexico who both qualify for free or reduced price lunch and do not have Social Security Numbers. It is worth noting that a school *may not* require a social security number from a student to enroll in NSLP and that each student or family member filling out the application may check a box stating that they do not have such a number.

B. Maximize Pool of Eligible Students

The more children found to be eligible, the more meals can be served to those children and the more the economy of scale can improve profitability for LEAs. There are several tools for LEAs and schools to use to maximize the pool of eligible students.

1. Encourage Local School Officials to Complete Individual Applications Where Necessary

Given the ever-changing number of children whose parents might not speak English, whose families are not able to surmount seemingly intimidating school applications, and the number of migrant, homeless and runaway children in the school system, it is well worth the time for school officials to designate staff to fill out applications for certain children.

The federal regulations also give local school officials wide latitude to submit applications on behalf of eligible students where the student's household has failed to apply.¹¹¹ This method may be used on an individual, case-by-case basis when the official has information (the source of which must be included in the application) that a student's household meets that school district's own eligibility criteria.¹¹² School officials are restricted only from using this method to certify groups or categories of students.¹¹³ Federal guidelines also encourage officials to obtain temporary approval for migrant, homeless or runaway children whose status as such is still being processed by the relevant agency.¹¹⁴ The state should encourage local school officials to take full advantage of the authority granted them by federal regulations in order to ensure that no eligible child or household is overlooked.

2. Identify Eligibility by Household Rather Than by Child

If one child in a household is eligible, schools should automatically enroll the other children in that household. Some children are not SNAP, FDPIR or TANF recipients but are members of households in which other children are. This may be the case for immigrants who are ineligible for benefits, or non-citizens whose parents decline benefits on their behalf despite their having citizen siblings. A solution to this issue would be to identify all children in a household as eligible for free lunch once one child in the household is identified as a recipient of SNAP, FDPIR or TANF benefits.¹¹⁵ By directly certifying all children in a household where one child has been identified as receiving SNAP, FDPIR or TANF benefits, school districts can simplify the matching process and expand the effectiveness of direct certification.¹¹⁶ Oregon, for instance, identifies unmatched SNAP or TANF children who are siblings of matched SNAP or TANF children and provides this information to school districts.¹¹⁷

All children living in households already determined to be at or below 130 percent of the poverty line should be automatically enrolled in the NSLP.

3. Send Letters to Serve in Lieu of the NSLP Application's Proof of Income

Children receiving SNAP, FDPIR or TANF benefits are identified by records in the appropriate state-level database. Normally those records will match school enrollment records, thus identifying students who do not need to fill out an NSLP application. But such record-matching is imperfect: change in enrollment, outdated records and lack of adequate identifying information can create gaps in certification. Massachusetts addresses this problem by identifying those children who are eligible for SNAP or TANF but are not matched to enrollment records and sending letters to the children's parents notifying them of eligibility.¹¹⁸ New Mexico should consider using a similar system of letter notification. Such a letter, when brought to the school district, would be treated as a valid substitute for a proof of income for an NSLP application.

4. Instruct LEAs to Perform Direct Certification Automatically

One issue not clearly addressed by the NSLA is the refusal of free lunches by eligible households. Once LEAs have ensured the direct certification of eligible children, the NSLA requires them to promptly notify the household of the children's eligibility status and then to ensure that the benefits actually be granted to those children.¹¹⁹ Households may decide, however, not to accept available benefits in which case such families are asked to notify the respective LEA. In such cases the children, although directly certified, will not be provided free school lunches.

The NSLA is silent on the issue of whether reapplication for free school lunches is automatically done in the following school year using direct certification or if households, although their children might be directly certifiable, must apply for free lunches because they have declined in the past. New Mexico should consider this issue and instruct LEAs to automatically perform direct certification in the following school year. This approach would remove the burden of reapplication from parents and would ensure that children who qualify for free lunches are given the chance to receive them even if their parents had previously declined.

5. Use Additional Discretionary Data to Identify Eligible Students

Another aspect of direct certification left open by the NSLA is the use of information other than that derived from SNAP. LEAs are given discretion to use additional information and data available to them to decide if households, and thus children, meet the eligibility criteria for free or reduced price meals and complete and file an application on behalf of such children. Whereas the NSLA does not specify which other sources of information LEAs might use, the CNA refers to data available for homeless and runaway children.¹²⁰ In addition to

The Secretary should exercise all available discretionary measures to certify households and children.

SNAP records, New Mexico currently also uses FDPIR records, but should consider using data from TANF and possibly other state or federal public assistance programs. Although it has not been determined if additional data and information is used by various states in their direct certification systems, the Secretary of Education should encourage New Mexico to use any other readily available records that identify households living at or below 130 percent of the poverty level to qualify children in those households to receive free lunch.

6. Emphasize the Regular Upkeep of School Registers

School officials should be encouraged to regularly update their school registers to ensure that their respective schools are receiving all federal and local revenues available.

II. Determine NSLP Eligibility within Mandatory 10-Day Period

According to the USDA, an eligibility determination must be made within 10 working days of the receipt of an application for free lunch.¹²¹ The tolling of the 10 days starts when the school or LEA first receives that application.

The implications of not processing children within the clearly defined mandatory 10 day period are massive for both the children and the schools. In APS alone, approximately \$51,000 of its unpaid lunch debt was said to be from children who qualified for free or reduced price meals. It is believed that many of these children had applied for the NLSP and were either not approved within the required time and/or their applications had been lost in the process. Anecdotal reports state that APS, for example, takes several months to process applications. This costs the school federal reimbursement for lunches and costs the children the opportunity to eat.

The causes of this delay include the frequent misplacement of the applications at the school level and the mistaken belief that the 10 day time frame begins when the application is received by the Food Service Division of APS, where processing occurs, rather than when the school receives the application from the parent.¹²² In either instance, while the application either remains misplaced or awaits delivery from the school to the Food Service Division, full cost meal charges accrue to the parents. This debt, resulting solely from APS' failure to adhere to federally mandated timeframes, remains with the parents even when the family subsequently qualifies for free or reduced-priced lunch.¹²³ The Secretary should work with the SNB and school districts to ensure that applications are processed in a timely manner and should implement government resources that will enable schools to provide hot lunches to all children and receive reimbursement for those lunches.

The NSLA mandates that in cases where verification processes are undertaken and eligibility for free or reduced price school lunches is not confirmed, households must be notified 10 days

before benefits are reduced or terminated.¹²⁴ Historically, some school districts, including APS, have failed to comply with this federal requirement. New Mexico should take steps to ensure that all school districts comply with this federal law.

The NSLA also stipulates that households may appeal decisions to terminate or reduce benefits. New Mexico should take steps to ensure that households are apprised of and given freedom to exercise this right.

III. Improve Communication with Parents

A. Engage in Thoughtful and Widespread Outreach to Parents and Guardians

One of the most obvious ways to increase the pool of eligible students who actually enroll in NSLP is to ensure that the parents and guardians of those students know that they are eligible. Not only does this involve working with parents of varying language and literacy capabilities, but it involves schools expending some money and time to figure out how best to connect with parents.

Given the requirement that schools engage in parental involvement activities, enrolling students in the NSLP at the beginning of school each year is an excellent tool to bring those parents into the fold while ensuring that their children have fuel for the day.

B. Ensure All Communications Are Translated into Appropriate Languages

There are certain considerations when disseminating information and instructing households to apply for assistance. To the extent applications are necessary, federal regulations require communication with households to be made in a language that parents can understand.¹²⁵ Therefore, respective informational material should be available in any language spoken within the target population.¹²⁶

Certain jurisdictions provide forms of notices and other information in multiple languages. For example, Wisconsin's Department of Public Instruction website includes forms of notices published in Spanish and English, as well as links to free and reduced price school meals applications translated into 24 additional languages.¹²⁷ The Santa Fe Public School district (SFPS), in addition to having free/reduced-price applications available in Spanish on its website,¹²⁸ ensures that application forms sent home to families at the beginning of the school year are written in both Spanish and English.¹²⁹ SFPS also encourages parents to fill out applications for free/reduced-price lunches during on-campus registration because bilingual school staff members are available to assist.¹³⁰

C. Use Internet Presence and Mailings for Communications and Payment

In order to ensure that families are aware of free and reduced price lunches, federal regulations expressly require that letters or notices be sent to families of schoolchildren regarding the availability of free and reduced price lunches.¹³¹ In New Mexico, each LEA expressly agrees in writing to send such notices to parents as part of its agreement to participate in the NSLP.¹³²

School districts should provide notification and application materials related to free and reduced price meals in multiple languages.

To the extent possible, both to increase the convenience and to maximize the effectiveness of such correspondence, New Mexico should also make the information in these notifications available online. For example, as noted above, Wisconsin's Department of Public Instruction maintains a website with information on community and school nutrition programs. Using a website also facilitates the provision of forms and correspondence in multiple languages.

Unfortunately many of the households in need of public assistance may not have regular internet access and, therefore, similar websites are more accessible to LEAs than families within the LEAs respective districts. Santa Fe Public School (SFPS) recognizes this limitation and addresses it in the school lunch application materials.

D. Use Sound Business Practices for Debt Notification and Collection

One of the most important issues for LEAs is the ability to collect any debts owed to it. Lost money impacts the bottom line budget that pays for salaries, school supplies and other important school costs. At the same time, debts must be collected in an ethical and effective manner. Students who lack control over whether a debt is paid by their parents should not incur the punishment for their parent's failure or inability to pay their child's lunch bills. Schools must use sound business practices to notify parents of outstanding lunch bills and, ultimately, to collect those debts.

▪ Send Formal Written Notices to Parents

Currently some school districts, such as APS, do not issue written or web-based notices to parents requesting payment for outstanding charges. APS has instead instituted a system of automated calls to parents in arrears. This method is extremely problematic because not all parents actually receive these notifications, there is no formal notice when money is owed and the lack of any formal written bill prevents parents from examining the charges.

To address these issues, each school district should take two key steps. First, each district should develop a system that informs parents, both at the beginning of the school year and on an ongoing basis, of the local school board's policies with respect to payment for meals served. Second, each school district must establish an effective parent notification system for cases in

which a student's meal payment account is low and/or when the student has begun charging for his or her meals.

In addition, the notification of parents should be conducted in a consistent manner that does not cause embarrassment to students or create stigma. Mailing a formal, written notification once a student charges a meal containing a detailed bill of the amounts owed coupled with automated reminder phone calls is a practical way of getting parents to pay unpaid lunch bills. For example, schools in Valencia County, New Mexico begin sending letters to parents and calling home as soon as students begin charging lunches.¹³³

Parents should be notified about school meal policies and should be contacted immediately when a child's payment account is low.

▪ **Consider Alternative Notification Systems Only Where Necessary**

As with direct certification, flexibility is required in parent notification; the appropriate practice may vary in each school district due to unique circumstances. For instance, according to the SFPS Director of Student Nutrition, the school district does not mail letters to parents because it found that nearly half of such notices were returned due to an incorrect address on file.¹³⁴ Instead, SFPS sends notifications home with children on days when parents expect the child to bring home information from the school. Then, because such notifications are often overlooked, lost, or never given to the parent by the child, SFPS follows up with automated calls to parents.¹³⁵ If other districts similarly decide that mailing letters home to parents is not the most effective way to notify the parents of unpaid lunch debts, these districts can consider following the procedures laid out by SFPS.

Furthermore, instead of requiring that a check be mailed, a local school district can develop and utilize a web-based notification and payment system which will allow for faster processing of payments made by parents. The Chula Vista, California school district, for instance, relies solely on a web-based payment system and automated reminder phone calls to reduce a \$300,000 unpaid lunch balance,,¹³⁶ a combination the district has found more effective than serving children an alternative lunch.¹³⁷ If a school district determines that households are adequately utilizing its web-based notification and payment system, it can work to gradually phase-out mailing letters home to parents, which will reduce costs associated with printing and postage.

Finally, school districts can encourage the pre-payment of full-price and reduced price meals, perhaps even offering pre-payment discounts, thereby ensuring that children receive a nutritionally adequate meal every school day.

▪ Eliminate Alternative Lunch Programs

The SNB currently permits schools to serve alternative lunches to students that do not have the money to pay for school lunches on a given day and whose families have outstanding balances for school lunches in excess of permitted amounts.¹³⁸ Although these alternative lunch programs may be legal, they are costly from both an economic and social perspective.

Alternative lunch programs do not qualify for federal reimbursement.

Alternative Lunch Programs Operate at a Financial Loss

From a financial standpoint, it is important to note that no federal funding is available to reimburse schools for the costs associated with any alternative lunch served,¹³⁹ even if these lunches comply with the 1995 Dietary Guidelines for Americans promulgated as part of the Healthy Meals for Healthy Americans Act of 1994.¹⁴⁰ This is a significant financial weakness in the alternative lunch programs as compared with other programs available under the NSLP.

Alternative Lunch Programs Operate at a Psychological and Academic Loss

The alternative lunch program carries not only monetary but also psychological and academic costs. It significantly erodes the school environment by intensifying feelings of marginalization and social alienation among the program's recipients, an atmosphere which children of low socio-economic status must already combat.¹⁴¹ A child's sense of belonging can easily be undermined when he or she is plucked from the school lunch line, physically segregated from classmates and publicly shamed with a different and/or inferior meal.

By singling children out – sometime physically – alternative lunch programs can have dire consequences on young students' self-esteem.

These feelings of social alienation are particularly acute among middle school students who struggle with the adolescent trials of peer acceptance. At middle schools, officials have reported that lunchtime is charged with social dynamics where students choose their friends. As such, the stigma of the alternative lunch is intensified.¹⁴² Moreover, punishing students because parents have not paid their respective school lunch tabs engenders feelings of learned helplessness, a psychological condition that children of low socio-economic status are also more inclined to develop.¹⁴³ A child's developing sense of self-empowerment is easily damaged when he or she suffers consequences for actions he or she has no power to remedy.¹⁴⁴

Alternative Lunch Programs May Violate Students' Civil Rights

About \$51,000 of APS' unpaid lunch debt is owed by families who qualify for free or reduced price meals.

As part of participating states' and LEAs' obligation to provide free and reduced price meals to those who qualify, the NSLA expressly prohibits states and LEAs from discriminating against children unable to pay for a full price lunch. Specifically, the NSLA prohibits physical segregation and other forms of discrimination against eligible children and proscribes overtly identifying these children by any means.¹⁴⁵ New Mexico similarly includes a civil rights assurance in its agreement between the SNB

and each participating LEA that requires compliance with all civil rights nondiscrimination laws, regulations, instructions, policies and guidelines for any entities receiving NSLP-related financial assistance.¹⁴⁶

Serving alternative lunches to a segment of the school population effectively stigmatizes those students whose parents have lunch tabs in arrears. Observers at APS have reported that these students have, in some instances, been pulled out of the cafeteria lunch line by school officials or their agents.¹⁴⁷ As a result, these students are physically segregated and overtly identified as unable to afford a hot lunch.¹⁴⁸ In fact, many of these children are actually eligible to receive free or reduced-price lunches: about half of APS' unpaid lunch debt, or approximately \$51,000, is owed by families who presently qualify for free or reduced price meals.¹⁴⁹

IV. Take Advantage of “Universal Lunch” Provisions 2 and 3 by Lowering the Trigger Point to 75 Percent

Universal Lunch, a term denoting a school where all children are given Free Lunch and the school loses the costs associated with counting, collecting and obtaining reimbursement for each individual meal, is an essential tool for LEAs and schools seeking to save money. The point at which schools

Provisions 2 and 3 allow schools to feed more students and save money.

decide to change to Universal Lunch (also known as Provision 2 or 3) is determined by the percentage of students at a school receiving Free or Reduced Price lunch. When the number of children at a school on Free or Reduced Price lunch is high enough, it will be financially advantageous to eliminate the overhead costs accrued by counting, collecting and obtaining reimbursement for each lunch, even though the school gets less in federal reimbursement. In other words, the administrative savings is more than the reimbursement loss.

▪ The Legal Basis for Universal Lunch

In an effort to reduce the massive administrative costs of enrolling every eligible child one at a time every year, Congress introduced three alternative programs, commonly referred to as

Provision 1, Provision 2 and Provision 3, which set forth different requirements for annual determinations of eligibility for free and reduced price school meals and daily meal counts.¹⁵⁰ Provisions 1, 2 and 3¹⁵¹ extend the period of certification for children eligible for free or reduced-price meals, including school lunches, from one year to two years and from four or five years, respectively. These programs are available to schools which have operated a lunch program pursuant to the NSLP for at least two consecutive years. All three programs operate on an individual school basis.

Schools should switch to Universal Lunch if participation rates for free and reduced-price meals are at 75 percent or higher, because these programs work to lower the financial burden for the school while feeding more children.

For the purposes of this report, only Provision 2 and 3 are discussed as recommendations because Provision 1 lacks the necessary benefits. The table on the following page provides a brief overview and comparison:

	Minimum Required % of Children Eligible for Free/reduced- price Lunch	Certification Period	Requires Serving All Meals at No Charge	Basis for Calculating Reimbursement Claims
Provision 2	None	Four years, plus an optional four- year extension if income level of school population has not increased	Yes	Eliminates daily meal counts by type in all but the base year. In non-base years, schools claim reimbursement based on claiming percentages.
Provision 3	None	Four years, plus an optional four-year extension if income level of school population has not increased	Yes	Eliminates daily meal counts by type in all but the base year. In non-base years, the same level of reimbursement, as adjusted for inflation, enrollment and operating days, is given as the school received in base year.

▪ **Benefits of Electing Provision 2 or Provision 3**

The main benefit of becoming a Provision 2 or Provision 3 school is the elimination of various administrative burdens by streamlining meal service and decreasing food service costs. In terms of paperwork, applications are collected, meal categories are recorded and tracked and eligibility verifications are conducted only once every four or five years, at most. Providing free meals to all students creates a more efficient meal service system, allowing for the elimination of cashiers, PIN numbers, student lunch tickets or ID cards, and resulting in faster serving lines in the cafeteria. Students therefore spend less time in line and more time eating nutritious meals.¹⁵²

Administrative overhead is further decreased by reducing the costs associated with collecting, tracking and recording applications, meal categories (full price, reduced price or free), payments and verifications. Employee hours that previously had been spent on administration will instead be devoted to meal preparation and service.

The benefits of becoming a Provision 2 or 3 school are not universal or guaranteed. A school considering Provision 2 or 3 must evaluate whether the anticipated savings are likely to offset the costs of providing meals to its students at no charge. Again, the reduction of administrative costs has to be balanced against the financial cost to the school food authority to fund, from non-federal sources, the difference between: (1) the cost of serving meals at no charge to all participating children and (2) the federal reimbursement for the normal meal programs.

Without losing money, some school districts can operate under Provision 2 with as little as 60 percent of the student body receiving free or reduced price meals.

▪ **The Mechanics of Providing Universal Lunch under Provisions 2 and 3**

To use Provisions 2 or 3, a school must set up a base year. During the base year, standard meal counting and claiming procedures are used. Income eligibility applications are collected, eligibility is determined, verification is conducted and meals are counted by eligibility category at the point of service. School food authorities participating in Provision 2 or 3 are required to retain records for the base year and following years for specified time periods. The failure to maintain records may result in the state agency requiring the school to return to standard meal counting and claiming procedures because the level of federal reimbursement could not be justified and may result in fiscal action.¹⁵³

Schools choosing to invoke Provision 2 status must serve meals to all children, regardless of income, at no charge for a period of four years. Provision 2 reduces application burdens and simplifies meal counting and claiming procedures because it allows schools to establish claiming percentages and to serve all meals at no charge for a four-year period.¹⁵⁴

Reimbursement during the three years following the base year is determined by applying the percentages for free, reduced price and paid meals served during the base year to the total meal count for the claiming month. The base year is included as part of the four-year period. Schools

electing the Provision 2 alternative must pay the difference between federal reimbursement and the cost of providing all meals at no charge. As noted herein, however, the savings of administrative costs should far outweigh the cost of that reimbursement difference.

At the end of each four-year period, the respective state agency may approve four-year extensions if the income level of the school's population remains stable compared to the base year. Alternatively, schools may opt out of Provision 2 and return to standard procedures at any time.

The money to pay for the difference between the federal reimbursement and the cost of providing all meals at no charge under Provision 2 may not be from federal funds. Although lower percentages of eligible students make it more difficult to break even as a Provision 2 school, some school districts implementing Provision 2 have determined that they can operate without losing money in schools with as few as 60 to 75 percent of students eligible for free or reduced price school meals.¹⁵⁵ The actual break-even point depends on the specific characteristics of the district, which students will participate, food prices, the amount the school currently charges for meals, the amount spent on administration and other district-specific factors.¹⁵⁶ Provision 2 may be particularly worthwhile if a food service program is already operating at a surplus, serving breakfast at that school or if increasing participation is important to the financial success of the program. Rather than hire additional staff to speed up lunch lines or spend money to reconfigure the cafeteria, some schools commit funds to implementing and sustaining Provision 2 or 3.¹⁵⁷ The purpose of committing those funds is to ensure that the schools feed more children for less money.

Since 1995, amendments to the NSLA provide for Provision 3 as an alternative to Provision 1 and Provision 2.. Similar to Provision 2, Provision 3 ensures free school lunches for all participating school children, but for a five-year period (as opposed to the four-year period under Provision 2). In addition to the length of the program, Provision 3 differs from Provision 2 in two noteworthy respects. First, during the base year schools that participate in Provision 3 are only *encouraged*, not *required*, to provide meals at no charge. Provision 3 schools are required to provide meals to all participating children at no charge for a period of four years. Second, Provision 3 further alleviates administrative burdens by directly tying reimbursement in non-base years to *total* reimbursement paid in the base year, with annual adjustments for inflation and enrollment changes. Provision 3 allows schools simply to receive the same level of federal cash and commodity assistance each year, with some adjustments, for a four-year period.

Thus, Provision 3 eliminates the need to count and record the number of meals served daily in non-base years. Since Provision 3 cannot be adjusted for increased participation, it is best used in districts or individual sites that have very little growth in the number of students from year to year. On the other hand, because Provision 2 allows the number of claimed meals

**Schools implementing
Provisions 2 and 3 have saved
up to \$.24 per meal in**

to change within a reporting cycle, it is ideal for districts or schools where the number of students or the level of participation is expected to increase over time.

▪ **Economies of Scale = Lower Per Meal Costs**

In addition to administrative savings, higher student participation rates lead to lower per-meal costs due to economies of scale. Studies of the provisions show that schools have saved up to \$0.24 per meal on program administration.¹⁵⁸ These savings, in turn, can be used to benefit the program directly by improving the quality of the food served and by upgrading equipment. In some cases, the savings accrued by a Provision 2 or 3 school are sufficient to cover the difference between the federal reimbursement and the cost of providing universal free meals. Some schools even have money left over to renovate cafeterias, run promotions or otherwise improve the food service program.¹⁵⁹

▪ **Burdens Lifted from Parents**

Aside from the benefits to the school, Provisions 2 and 3 also provide benefits to the households of the students attending the schools. Parents' responsibility to prepare meals or provide money to purchase breakfast and/or lunch at school is completely eliminated. Meanwhile, parents can take comfort in knowing that their children will receive a nutritious school meal. Food service directors, teachers and principals recognize that income guidelines are not always perfect indicators for deciding which child might need a nutritious meal. Many families, regardless of income, do not provide a nutritious breakfast or lunch. Moreover, the "stigma" that students associate with eating free or reduced price meals is removed, making it more likely that the students will actually consume the meal for which they are eligible.

▪ **Determining When Schools Should Offer Universal Lunch as a Cost Saving Method**

According to the USDA, some school districts implementing Provision 2 have determined that they can operate without losing money in schools with as few as 60 to 75 percent of students eligible for free or reduced price school meals. It should be up to the schools and the state to justify their Provisions 2 and 3 trigger points.

Though there is no minimum percentage requirement, a higher percentage of eligible students for free or reduced price meals will ensure a greater likelihood of financial success under Provision 2 or 3. New Mexico could reduce its recommended participation threshold from 85 percent to 75 percent with little risk of financial harm to schools all the while encouraging greater fiscal responsibility on the parts of those schools.¹⁶⁰ This would maintain financial security for the districts while increasing efficiency and feeding more children.

While the only way to determine the point at which individual schools should change to Provision 2 or 3 is a school by school audit, it is clear that New Mexico's trigger point of 85 percent and APS's trigger point of 90 percent is unusually high and, therefore, might reveal unnecessarily high administrative costs that should be cut down anyway.

Additionally, if the school population's income level improves by more than five percent in a reporting cycle, the school will not be granted an extension of the cycle.¹⁶¹ As a result, the school faces the prospect of both administrative costs from keeping track of meals during the new base year and presumably lower federal reimbursement in the following years because of that improved income level. Finally, Provision 2 and Provision 3 are not suitable for school districts where there is a high probability of school closings or mergers because student populations are likely to shift at random, thus creating fluctuations in reimbursement rates.

V. Consider Eliminating “Reduced Price Lunch” and Offering Free Lunch to those Children.

One of the ways New Mexico can save its LEAs and schools money may be to eliminate the category of reduced price lunches and simply provide those children with free lunch. Much like the economic analysis supporting more schools offering Universal Lunch, the elimination of reduced price lunch is based on saving more in the administrative costs associated with counting and collecting reduced price lunches than is lost by a lower federal reimbursement.

The costs associated with each school counting a student's \$0.40 or trying to collect an unpaid \$0.40 is, arguably, higher than the \$0.40 lost per meal in federal reimbursement. Perhaps more importantly, this might result in an increase in participation of those reduced price eligible children. When Washington State eliminated reduced price lunch, lunch participation went up approximately 16.3 percent.¹⁶² The United States General Accounting Office is currently doing an assessment of the elimination of reduced price lunch nationwide based on the same theory explored in the “Financial Analysis” section below.

What is Reduced Price Lunch?

As noted above, students from families with incomes between 130 percent and 185 percent of the poverty level are eligible for a reduced price lunch, the price of which must not exceed \$0.40.¹⁶³

The daily federal reimbursement for each reduced price lunch is \$0.40 less than the reimbursement for free lunch, therefore requiring the enrolled student to pay this difference.¹⁶⁴ As noted by APS Food & Nutrition Services, a portion of the district's unpaid lunch charges stems from the inability of the parents whose children are enrolled in the reduced price lunch program to pay this daily fee.

Financial Analysis

Accordingly, the following is an assessment of whether schools in New Mexico might indeed be better served by eliminating the student fee of \$0.40 for each reduced price lunch, thereby avoiding the variable overhead costs associated with collecting this fee and tracking down unpaid charges.

To perform this cost analysis, an exact breakdown of the dollar amounts associated with variable overhead costs would be needed. Upon inquiry at the APS Department of Food & Nutrition Services and the New Mexico Public Education Department, this particular data either does not exist or is unavailable to the general public. Therefore, a clear-cut answer to the question posed may not be attainable. However, it is feasible to perform an evaluation with the following data, which are available:

1. the total number of students enrolled in New Mexico's NSLP for the 2007-08 and 2008-09 school years; and
2. the hourly wage of school staff who presumably conduct the collection, counting and tracking of the reduced price lunch fees.

Assuming a student fee of \$0.40, the goal is to calculate the total expected revenue from reduced price lunches to determine the extent to which staff hours would need to be reduced to achieve a break-even point. If the labor costs associated with counting, collecting and tracking the reduced price charges exceed that point, it may be more cost effective to eliminate the student fee. Conversely, if these staff hours fall below the break-even point, the conclusion may be that the reduced price lunch fee be maintained for the schools to continue to cover meal and overhead costs.

The following table shows the enrollment figures for New Mexico's federally funded school lunch program¹⁶⁵:

	2007-2008	%	2008-2009	%
Paid Lunch (Avg. Daily Participation)	58,152	21.7	58,400	21.7
Reduced Price Lunch	33,587	12.5	33,424	12.4
Free Lunch	176,007	65.7	177,714	65.9
TOTAL	267,746	100.0	269,538	100.0

The first step in such an analysis is to calculate the total expected annual revenue from reduced price lunch participants. The underlying assumption is that the schools utilizing the lunch program provide lunch to each participant each day during a 180-day school year. By multiplying the reduced price enrollment with the \$0.40 fee over a 180 day period, the total expected reduced price lunch revenue for the 2007-08 and 2008-09 school years would have been \$2,418,264 and \$2,406,528, respectively. The following table illustrates these calculations:

	2007-2008	2008-2009
Reduced Price Lunch Enrollment	33,587	33,424
Multiply by: Reduced Price Fee	\$0.40	\$0.40
Expected Daily Reduced Price Lunch Revenue	13,435	13,370
Multiply by: School Days per Year	180	180
TOTAL Expected Reduced Price Lunch Revenue	\$2,418,264	\$2,406,528

Before analyzing these estimated revenue figures, the total unpaid charges must be taken into account. Another assumption is that the schools employ staff to track down these charges, but a majority of the debt ultimately remains uncollected. Data on unpaid charges is only available from the APS district; therefore, a reasonable estimate can be calculated by prorating the unpaid charges within the APS district to approximate the total unpaid charges for all of New Mexico.

By comparing APS student enrollment numbers to those of the entire state, a ratio can be applied to estimate the total unpaid charges during both school years. The following table shows the student enrollment figures for both the APS school district and all New Mexico schools:¹⁶⁶

	APS District						New Mexico			
Enrollment:		2007-08	%	2008-09	%		2007-08	%	2008-09	%
Elementary School		43,848	51	43,581	49		155,507	46	156,115	46
Secondary School		42,959	49	45,220	51		182,393	54	184,283	54
TOTAL		86,807	100	88,801	100		337,900	100	340,398	100

The percentage breakdown of elementary school and secondary school student enrollment is relatively similar between the APS district and all of New Mexico. Total unpaid charges, therefore, can be estimated by comparing the student enrollment totals. The following chart represents the ratio analysis for prorating the total unpaid charges for both the 2007-08 and 2008-09 school years:

	2007-2008	2008-2009
APS Enrollment	86,807	88,801
New Mexico Enrollment	337,900	340,398
Ratio (New Mexico/APS)	3.89	3.83
APS District Unpaid Charges	\$130,000	\$300,000
New Mexico Estimated Unpaid Charges	\$506,031	\$1,149,980

Per this calculation, the total estimated unpaid charges for the state of New Mexico including both paid and reduced price lunches for the 2007-08 and 2008-09 school years are \$506,031 and \$1,149,980, respectively.

The next step, then, is to determine which portions of these charges comprise the unpaid reduced price lunch fees, as the totals of \$130,000 and \$300,000 include both paid and reduced price charges. Of course, only the portion relating to unpaid reduced price charges can be taken into consideration. If New Mexico enrollment figures are multiplied by the respective student charge for each type of lunch, a percentage breakdown can be calculated to determine which portion of the daily expected revenue is related to reduced price lunches.

Assuming similar proportions of collected versus uncollected charges for both paid and reduced price lunches, these percentages can then be applied to the estimated unpaid charges. The student price is \$1.75 for an elementary school lunch, \$2.00 for a secondary school (middle and high school) lunch, and \$0.40 for all reduced price lunches regardless of grade.¹⁶⁷ Given that the available paid lunch participation data is not broken out between elementary and secondary schools, a reasonable estimate can be determined by analyzing the number not enrolled in either the reduced price or free lunch programs. The percentage breakdowns can then be applied to the average daily paid lunch participation totals to estimate the number of elementary school and secondary school paid lunch participants.

	2007-08	%	2008-09	%
Non-Reduced Price or Free Lunch Enrollment:				
Elementary Schools	49,865	39	50,672	39
Secondary Schools	78,441	61	78,588	61
TOTAL	128,306	100	129,260	100
Multiply % by: Avg. Daily Paid Lunch Participation	58,152		58,400	
Estimated Paid Lunch Participation:				
Elementary Schools	22,600	39	22,894	39
Secondary Schools	35,552	61	35,506	61
TOTAL	58,152	100	58,400	100

With the estimated paid lunch participation and the known reduced price lunch enrollment for both school years, the expected daily lunch revenue can be calculated. The following chart represents the calculation of expected daily revenue for all three lunch categories:

	2007-08	%	2008-09	%
Enrollment/Participation:				
Elementary School Paid Lunch	22,600		22,894	
Secondary School Paid Lunch	35,552		35,506	
Reduced Price Lunch	33,587		33,424	
TOTAL	91,739		91,824	
Student Fee per Lunch:				
Elementary School Paid Lunch	\$1.75		\$1.75	
Secondary School Paid Lunch	\$2.00		\$2.00	
Reduced Price Lunch	\$0.40		\$0.40	
Expected Daily Revenue				
Elementary School Paid Lunch	\$39,550	32	\$40,064	32
Secondary School Paid Lunch	\$71,103	57	\$71,013	57
Reduced Price Lunch	\$13,435	11	\$13,370	11
TOTAL	\$124,089	100	\$124,446	100

By applying the above percentage breakdowns of the expected daily revenue to the total New Mexico estimated unpaid charges, the portion of these unpaid charges associated with the reduced price lunches can now be calculated. The following chart represents the estimated, or prorated, unpaid charges for the elementary paid, secondary paid and reduced price lunches:

Prorated Unpaid Charges – New Mexico:	2007-08	%	2008-09	%
Elementary Paid Lunch	\$161,286	32	\$370,223	32
Secondary Paid Lunch	\$289,958	57	\$656,211	57
Reduced Paid Lunch	\$54,787	11	\$123,546	11
TOTAL Estimated Unpaid Charges	\$506,031	100	\$1,149,980	100

The estimated unpaid charges for all reduced price lunches in New Mexico amount to \$54,787 and \$123,546 for the 2007-08 and 2008-09 school years, respectively. Assuming that these amounts are ultimately deemed uncollectible, they are deducted from the total expected

reduced price lunch revenues for each year to perform the break-even analysis. Under the assumption that lunch is served to each enrollee over a 180-day school year, \$2,363,477 and \$2,282,982 in costs for the 2007-08 and 2008-09 school years would have had to been eliminated to provide the reduced price lunch enrollees a free lunch. The following chart illustrates this calculation:

All New Mexico:		2007-2008		2008-2009
Total Expected Reduced Price Revenue		\$2,418,264		\$2,406,528
Estimated Unpaid Reduced Price Charges		\$54,787		\$123,546
Total Cost to Cover		\$2,363,477		\$2,282,982

The critical determination is that if the schools participating in the NSLP for the entire state of New Mexico incurred greater costs than these to count, collect and track down the reduced price lunch charges, the New Mexico PED may be better served economically eliminating the reduced price fee altogether. Given that this overhead cost information may not be available or may be difficult to isolate, this break-even analysis can be dissected further.

According to the APS Food & Nutrition Services website, a “cafeteria substitute” would presumably perform the tasks described above; the position pays \$6.75 per hour.¹⁶⁸ By dividing the total costs to cover by this hourly rate, it is estimated that staff hours would have needed to been reduced by 350,145 and 338,220 hours for the 2007-08 and 2008-09 school years, respectively. The following chart shows the calculation of how many hours each school would have needed to eliminate per day:

All New Mexico:		2007-2008		2008-2009
Total Cost to Cover		\$2,363,477		\$2,282,982
Divide by: “Cafeteria Substitute” Hourly Rate		\$6.75		\$6.75
Total Hours to be Reduced over 180-Day School Year		350,145		338,220
Divide by: Total Schools Participating in NSLP Program		856		848
Total Hours to be Reduced per School (180 days)		4.09		399
TOTAL Hours to be Reduced per School per Day		2.27		2.22

Based on the available data and assuming a \$6.75 hourly wage rate¹⁶⁹, it is estimated that the break-even point of overhead cost versus anticipated revenue would have been 2.27 and 2.22 daily staff hours per school, respectively, over the past two school years.

New Mexico may cut costs by eliminating reduced price lunch and offering free lunch to those students.

In summary, if schools are employing staff to count, collect and track reduced fee charges for approximately 2 hours and 15 minutes or greater each day, it may be more cost effective to eliminate the reduced price fee and offer free lunch to these students.

Inherent in this assessment is the idea that schools or school districts would themselves need to determine if this hourly threshold is being met or exceeded. If these revenue projections are estimated to be lower in future school years and/or the average hourly wage rate for school staff in New Mexico increases, there would be less total cost to be eliminated in order to reach the break-even point. Therefore, the total daily staff hours to be reduced per school would be less than the estimates above for the 2007-08 and 2008-09 school years.

VI. Explore Alternative Ways to Increase Financial Benefit to LEAs

In addition to increasing participation rates, schools should also explore implementing cost-cutting mechanisms that do not compromise the nutritional value of the meals provided. For instance, purchasing products in bulk, joining food cooperatives and reducing labor costs have proven to be effective methods for some school districts.¹⁷⁰

Schools may also purchase food supplies directly from local farmers. “Farm to School” programs implemented throughout the United States provide farmers with an additional revenue source and provide schools with fresh produce.¹⁷¹ An estimated 1,929 school districts are engaging such programs.¹⁷² SFPS, for instance, created a Farm to School program, currently implemented in six elementary schools and one high school, in which 40 participating farmers deliver a variety of locally-grown products including salad greens, sweet potatoes, onions and apples directly to the school sites or to the central warehouse.¹⁷³ In Baltimore, the district saved \$50.00 per case of apples by buying them from local sources. This served not only to improve the school’s nutrition budget, but to stimulate the local economy.

The Secretary, under that office’s broad authority, can work with the SNB to design programs that allow schools to get additional funds and food stuffs, thereby feeding a greater percentage of needy children attending New Mexico schools.¹⁷⁴ Implementing cost-saving measures may help schools to capture lost revenues while complying with federal policy.

VII. Obtain Greater Federal Funding

To defray the cost of developing a statewide system of direct certification, grants from the USDA¹⁷⁵ could be a potential source of money to help fund improvements.¹⁷⁶

CONCLUSION

During this time of economic uncertainty, school districts must fight to uphold the policies ensuring the health, stability and dignity of its students. Implementation of temporary certification, more efficient direct certification, improved communication with parents and the adoption of certain cost-cutting measures can enable districts to increase school lunch participation rate and the availability of government resources. The result of such measures will be an increase in profitability that at the same time ensures that New Mexico's students receive a hot lunch that meets federal nutritional guidelines.

ENDNOTES

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- ¹ Gordon W. Gunderson, USDA, Food & Nutrition Serv., *The National School Lunch Program – Background and Development*, <http://www.fns.usda.gov/cnd/Lunch/AboutLunch/NSLP-Program%20History.pdf> (last visited May 8, 2009).
 - ² Food Research and Action Ctr. ("FRAC"), *available at* http://www.frac.org/html/federal_food_programs/programs/nslp.html (last visited May 8, 2009).
 - ³ Katherine Ralston et al., USDA, Econ. Research Serv., Econ. Research Rep. No. 61, *The National School Lunch Program: Background, Trends, and Issues*, 34 (July 2008), *available at* <http://www.ers.usda.gov/Publications/ERR61/ERR61.pdf>.
 - ⁴ Section 245.2 of the C.F.R. and Section 9(b)(1)(A) of the CNA each refer to the income eligibility guidelines updated annually by the Secretary of Agriculture. 130% is the current threshold pursuant to the USDA, Food and Nutrition Serv., *Eligibility Manual for School Meals; Federal Policy for Determining and Verifying Eligibility*, (Jan. 2008), at 4, *available at* http://www.fns.usda.gov/cnd/guidance/eligibility_guidance.pdf [hereinafter *USDA Eligibility Manual for School Meals*]; *see also* New Mexico Pub. Educ. Dep't, *Guidance Manual for School Meals*, at 11 (May 2007) [hereinafter *N.M. Guidance Manual for School Meals*], *available at* <http://www.ped.state.nm.us/nutrition/dl08/NutritionManual20072008.pdf>. Until June 30, 2009, the 130% poverty reference equals U.S.\$27,560 for a family of four.
 - ⁵ 42 U.S.C. § 1758; *Eligibility Manual for School Meals*, *supra* note 4, at 4-5.
 - ⁶ USDA Food and Nutrition Serv., *National School Lunch Program Fact Sheet*, § 4, *available at* <http://www.fns.usda.gov/cnd/Lunch/AboutLunch/NSLPFactSheet.pdf> (last visited May 8, 2009).
 - ⁷ *See* 7 C.F.R. § 210.9(f) (2009).
 - ⁸ 7 C.F.R. § 210.9(b)(7) (2009).
 - ⁹ Joe Richardson, CRS Report for Congress, *Child Nutrition & WIC Programs: Background and Recent Funding*, (July 12, 2006), <http://www.nationalaglawcenter.org/assets/crs/RL33307.pdf>.

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- ¹⁰ 42 U.S.C. § 1753(b)(1).
- ¹¹ *Id.* § 1759(a).
- ¹² FRAC, *Commodity Foods and the Nutritional Quality of the National School Lunch Program: Historical Role, Current Operations, and Future Potential*, at 8 (Sept. 2008), available at <http://www.frac.org/pdf/commodities08.pdf>.
- ¹³ 7 C.F.R. § 235 (2008).
- ¹⁴ Cal. Food Policy Advocates, *CFPA School Meal Primer, School Meal Funding*, at 29 (Mar. 2005), available at <http://www.cfpa.net/obesity/PrimerSection4Funding.pdf>.
- ¹⁵ State-by-State Listing for School Meal Mandates and Reimbursements, at 8 (Data from 9-2007), available at http://www.schoolnutrition.org/uploadedFiles/School_Nutrition/16_LegislativeAction/State_Reimbursements_2007.pdf (last visited May 8, 2009).
- ¹⁶ *N.M. Guidance Manual for School Meals*, *supra* note 4, at 10.
- ¹⁷ Ralston et al., *supra* note 3, at 2.
- ¹⁸ *Id.* at 2-3.
- ¹⁹ *Id.* at 3.
- ²⁰ N.M. Stat. Ann. §§ 9-1-1 to 9-1-13.; N.M. Stat. Ann. §§ 9-24-1 to 9-24-13.
- ²¹ N.M. Stat. Ann. 1978 § 9-1-5(B); N.M. Stat. Ann. 1978 § 9-24-8(B) ("To perform his duties, the [S]ecretary has every power expressly enumerated in the law, whether granted to the [S]ecretary, the [PED] or any division of the [PED], except when any division is explicitly exempted from the [S]ecretary's power by statute.").
- ²² *N.M. Guidance Manual for School Meals*, *supra* note 4, at 2.
- ²³ N. M. Stat. Ann. § 9-24-5
- ²⁴ *Id.* § 9-24-4(A)
- ²⁵ Albuquerque Pub. Schs., *2008-2009 Approved Annual Budget*, Executive and Financial Summary for Fiscal Year: July 1, 2008 to June 30, 2009.
- ²⁶ USDA Food & Nutrition Serv., Special Nutrition Programs Report No. CN-08-MCII, *School Lunch and Breakfast Cost Study-II – Final Report*, (Apr. 2008), at 1-3 [hereinafter "USDA, *School Lunch and Breakfast*"], available at <http://www.fns.usda.gov/ora/menu/Published/CNP/FILES/MealCostStudy.pdf>.
- ²⁷ Constance Newman, Katherine Ralston & Annette Clauson, *Balancing Nutrition, Participation, and Cost in the National School Lunch Program*, Amber Waves, (Sept. 2008), available at <http://www.ers.usda.gov/AmberWaves/September08/Features/BalancingNSLP.htm>.
- ²⁸ USDA, *School Lunch and Breakfast*, *supra* note 26.
- ²⁹ Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2008 through June 30, 2009, 73 Fed. Reg. 38,390 (July 7, 2008).
- ³⁰ The USDA Notice, 73 Fed. Reg. 38,392, 38,393 (July 7, 2008), explains that when 60% or more lunches served during the second preceding school year are served for free or at a reduced price, reimbursement rates are

higher, currently \$.02 per meal. This should be an incentive for schools and LEAs to achieve the 60% threshold and hence work harder on direct certification.

³¹ USDA, *School Lunch and Breakfast*, *supra* note 26.

³² *Id.*

³³ See Nancy Brown et al., *Increasing Participation by High School Students in the School Lunch Program*, National Food Service Management Institute, available at www.nfsmi.org/DocumentDownload.aspx?id=1106 (last visited May 8, 2009).

³⁴ “Tightening Income Documentation in a Means Tested Program: Who Stays Away” (Burghardt et al., 2004).

³⁵ 42 U.S.C. § 1758; *USDA Eligibility Manual for School Meals*, *supra* note 4, at 2.

³⁶ See 7 C.F.R. § 245.6 (2008) for an explanation of the application process. Applications have to be processed within 10 working days, but should ideally be processed immediately. *USDA Eligibility Manual for School Meals*, *supra* note 4, at 16. Reference to TANF is made in the NSLA as well as in the CNA.

³⁷ The 2008 USDA Report to Congress states that in the 2007/2008 school year (i) 71.4% of all New Mexico school districts used direct certification, 4.7% more than on the national average. USDA Food & Nutrition Serv., Special Nutrition Programs Report No. CN-08-DC, *Direct Certification in the National School Lunch Program: State Implementation Progress – Report to Congress* 6 (Dec. 2008) [hereinafter *USDA Direct Certification Report*], available at <http://www.fns.usda.gov/OANE/MENU/published/CNP/FILES/DirectCert08.pdf>. 86% of New Mexico school-age children participating in SNAP were directly certified for free school meals, thereby ranking New Mexico seventh nationwide. *USDA Eligibility Manual for School Meals*, *supra* note 4, at 16.

³⁸ For further programs and their relevance for the eligibility for the school lunch program, see section 9(b)(5) of the CNA, 42 U.S.C. § 1758(b)(5), referring to additional programs which can, at the discretion of LEAs, be included, as well as the *USDA Eligibility Manual for School Meals*, *supra* note 4, at 40-44.

³⁹ Nancy Cole & Christopher Logan, *Data Matching in the National School Lunch Program – Approaches to Direct Certification and Direct Verification: Guide for State and Local Agencies* 4 (Mar. 2007), available at <http://www.fns.usda.gov/oane/MENU/Published/CNP/FILES/DataMatchingGuide.pdf>.

⁴⁰ For instance, it is estimated that about 67% of eligible people in the United States received SNAP benefits in fiscal year 2006. In New Mexico, 71% and 69% of eligible people and eligible working poor, respectively, received SNAP benefits in 2006. See Karen E. Cunningham, Laura A. Castner, & Allen L. Schirm, *Reaching Those in Need: State Food Stamp Participation Rates in 2006*, Mathematica Policy Research (Nov. 2008), available at www.mathematica-mpr.com/publications/redirect_pubsdb.asp?strSite=pdfs/fns06rates.pdf. See also *State of the State 2008*, http://www.frac.org/State_Of_States/2008/states/NM.pdf (last visited May 8, 2009).

⁴¹ See *supra* notes 4 through 8 and accompanying text.

⁴² See 42 U.S.C. § 1758(b)(12); see also *USDA Eligibility Manual for School Meals*, *supra* note 4, at 39-44.

⁴³ See Hearing before the Senate Agriculture, Nutrition & Forestry Comm. to review the federal government initiatives regarding the school lunch and breakfast programs (statement of Mr. Robert Greenstein, Executive Director, Center on Budget and Policy Priorities) Mar. 4, 2003, available at http://agriculture.senate.gov/Hearings/testimony.cfm?id=732&wit_id=1908 (“In addition, it makes sense to extend direct certification, at state option, so children enrolled in Medicaid or SCHIP can be directly certified. Many children who are eligible for free or reduced-price meals are enrolled in Medicaid or SCHIP but not in TANF or food stamps. Since Medicaid and SCHIP conduct income verification, the school meals program can piggyback on that. This will further lower error rates without deterring eligible children.”)

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- ⁴⁴ *Id.*
- ⁴⁵ See 42 U.S.C. § 1758(b)(4).
- ⁴⁶ *USDA Eligibility Manual for School Meals*, *supra* note 4, at 47.
- ⁴⁷ See *N.M. Guidance Manual for School Meals*, *supra* note 4, at 11; Daniel R. DePaula, Presentation at N.M. Student Nutrition Bureau 2008-09 *Back to School Workshop: Direct Certification*, available at <http://www.ped.state.nm.us/nutrition/dl09/Direct%20Certification%20MAIN.pdf> (last visited May 8, 2009).
- ⁴⁸ http://www.nmpovertylaw.org/new_mexico_works.html (last visited July 7, 2009)
- ⁴⁹ 7 C.F.R. § 245.b(c)(3)(iii). Note that federal regulations do not specify whether temporary certification should be granted for 45 calendar days or 45 school days.
- ⁵⁰ 7 C.F.R. § 245.5(a)(1)(vii).
- ⁵¹ 7 C.F.R. § 245.5(a)(2).
- ⁵² USDA Food and Nutrition Serv., Preliminary Report on the Feasibility of Computer Matching in the National School Lunch Program, available at <http://www.mypyramidforkids.gov/ora/MENU/Published/CNP/FILES/NSLPDataMatchExecSum.htm> (last visited June 30, 2009).
- ⁵³ The USDA suggests that LEAs using the letter-method should work towards the use of direct matches. See Cynthia Long, *Mandatory Implementation of Direct Certification with the Food Stamp Program – USDA Implementation Memo SP 27-2008* (July 7, 2008), available at http://www.fns.usda.gov/CND/Governance/Policy-Memos/2008/SP_27-2008.pdf. The Center on Budget & Policy Priorities even suggests that the letter-method contravenes section 9(b)(4)(C) of the NSLA, 42 U.S.C. § 1758(b)(4)(C); see also Zoë Neuberger, *Reducing Paperwork & Connecting Low-Income Children with School Meals*, at 26 (Center on Budget & Policy Priorities, Nov. 2004), available at <http://www.cbpp.org/files/11-16-04fa.pdf>.
- ⁵⁴ The three main methods for direct certification are described, *e.g.*, by: (i) the FNS in *USDA Direct Certification Report*, *supra* note 37, at 21; (ii) Stanley C. Garnett, USDA Implementation Memo, *Direct Certification and Direct Verification of Children in Food Stamp Households – Reauthorization 2004 – SP 8* (Nov. 15, 2004), available at http://www.fns.usda.gov/cnd/Governance/Reauthorization_Policy_04/Reauthorization_04/2004-11-15.pdf; (iii) Cole & Logan, *supra* note 39, at 15; (iv) Philip Gleason, *Direct Certification in the National School Lunch Program Expands Access for Children*, 27 *Journal of Policy Analysis and Management* 1, 82-103 (2008); and (v) Neuberger, *supra* note 53.
- ⁵⁵ *USDA Direct Certification Report*, *supra* note 37, at 21. Neuberger, *supra* note 53, at 28-31, makes suggestions on how to tackle the problem of automatically capturing all siblings of an eligible household with the computer matching.
- ⁵⁶ See Cole & Logan, *Data Matching in the National School Lunch Program: 2005*, at 21-22 (Feb. 2007) [hereinafter "*Data Matching 2005*"], available at <http://www.fns.usda.gov/oane/menu/Published/CNP/FILES/DataMatching-V1.pdf>. Note that there is nonetheless wide variation among states. For example, Indiana, noted in the “best practices” section of this report for its state-level data matching system, see page 16, *infra*, has only a 49.6% direct certification rate. This variation from other states is attributable not only to differing algorithms and data quality, but also to the fact that (unlike in other states) only a portion of Indiana’s districts use the state-level direct certification system. *Data Matching 2005*, at 21.
- ⁵⁷ See *Data Matching 2005*, *supra* note 56, at 21-22.
- ⁵⁸ Cole & Logan, *supra* note 38, at 10. See *supra* note 54 for the three most commonly used methods.

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- ⁵⁹ State of New Mexico Public Education Department, Memorandum SNB (2007-2008) 24, May 13, 2008, *available at* http://www.e-ratecentral.com/New_Mexico/NM_Direct_Certification_for_NSLP_Eligibility.pdf.
- ⁶⁰ "Key considerations are: capabilities of statewide student information systems, secure websites for exchanging data with school districts, school district data systems for student records and food service, and existing data matching processes." *Id.* at 19.
- ⁶¹ For instance, if a unique identifier is not available for delivering state-level matches to districts, then districts will have to do the data matching anyway and the state-level match will not have saved the districts much effort. *See id.*
- ⁶² For instance, a state using state-level matching would either have to have a statewide student information system that can be used for direct certification or collection of data from school districts for this specific purpose. *See id.* at 16.
- ⁶³ *See id.* at 18.
- ⁶⁴ *See id.* at 16.
- ⁶⁵ USDA Food and Nutrition Serv., 72 Fed. Reg. 63,794 (Nov. 13, 2007). LEAs, of course, have to process applications for free school lunches throughout the entire school year, pursuant to 7 C.F.R. § 245.6(c).
- ⁶⁶ The USDA also *encourages* LEAs to conduct additional direct certification activities due to the current economic situation, but does not provide more specific recommendations on ways to assist families during economic downturn. *See* USDA Food and Nutrition Serv., *Ways To Assist Families During Economic Downturn*, Memo SP 15-2009 (Feb. 27, 2009), *available at* http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2009/sp_15-2009_os.pdf [hereinafter "USDA Memo SP 15-2009"].
- ⁶⁷ 7 C.F.R. § 245.6(c).
- ⁶⁸ *USDA Direct Certification Report*, *supra* note 37, at 22-23; *see also* USDA Food & Nutrition Serv., *Direct Certification and Direct Verification of Children in Food Stamp Households – Reauthorization 2004*, Implementation Memo SP-8 (Nov. 15, 2004), *available at* http://www.fns.usda.gov/cnd/Governance/Reauthorization_Policy_04/Reauthorization_04/2004-11-15.pdf.
- ⁶⁹ "In recent years, roughly 3 million families with children enrolled in [SNAP] at some point between October and July; these families may not have been identified as eligible for free meals even though they could have been directly certified." Zoë Neuberger, *Implementing Direct Certification* 10 (Center on Budget & Policy Priorities, Aug. 2006), *available at* <http://www.cbpp.org/files/8-11-06fa.pdf>.
- ⁷⁰ *See* USDA Memo SP 15-2009, *supra* note 66 (encouraging school districts to conduct direct certification as frequently as possible).
- ⁷¹ *See* Neuberger, *supra* note 53, at 10, 26-27.
- ⁷² "A State-level match using current student records collected from districts, as in Arizona and Wisconsin, will be comparable to district-level matching on this dimension." Cole & Logan, *supra* note 39, at 18.
- ⁷³ This is due to state-level matching performing a single match with entire statewide files of student records and SNAP and TANF records. District-level matching, on the other hand, requires separating SNAP and TANF data by geographic area, which inevitably results in sending some of the data to the wrong districts. Furthermore, state-level matching identifies all possible matches for a given recipient of SNAP and TANF benefits so that the best possible match can be chosen whereas district-level matching may be more likely to result in mismatches of students with common names because the best match is not in the district. *See id.* at 19.
- ⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *See* Neuberger, *supra* note 53, at 13, 20-22.

⁷⁸ *Id.* at 16.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ The Department of Education used to keep very little information on individual students, requiring each district to provide a file of student information to conduct direct certification. *Id.* Due to changes in the areas of testing, achievement reporting and accountability, the Department of Education now maintains more student-level information, allowing it to generate a student enrollment list from its own internal sources, rather than using information uploaded by the district. *Id.*

⁸² *Id.*, at 16-17.

⁸³ *Id.* at 17.

⁸⁴ *Id.*

⁸⁵ Indiana's Department of Education uses the "soundex" function available with the ORACLE database system. *Id.* Similar options are available in other database systems. *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 26.

⁸⁹ *Id.*

⁹⁰ *Id.* at 26-27.

⁹¹ *See* Neuberger, *supra* note 53 at 10, 26-27.

⁹² *Id.* at 23.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 24.

⁹⁶ *Id.* at 23.

⁹⁷ *Id.*

⁹⁸ *Id.* at 20.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 20-22.

¹⁰² *Id.* at 20.

¹⁰³ *Id.* at 21.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Cole & Logan, *supra* note 39, at 13.

¹⁰⁸ By way of example, see page 17, *infra*, describing the system used by Washington State.

¹⁰⁹ See Cole & Logan, *supra* note 39, at 18.

¹¹⁰ *Id.*

¹¹¹ 7 C.F.R. § 245.6(d).

¹¹² *Id.*; see also *USDA Eligibility Manual for School Meals*, *supra* note 4, at 22-23.

¹¹³ 7 C.F.R. § 245.6(d).

¹¹⁴ See *USDA Eligibility Manual for School Meals*, *supra* note 4, at 22-23.

¹¹⁵ See Neuberger, *supra* note 53, at 11-12.

¹¹⁶ "By directly certifying all children in a food stamp household based on the match of one such child, state nutrition agencies and school districts could greatly simplify the matching process while extending its effectiveness." *Id.* at 11.

¹¹⁷ See Cole & Logan, *supra* note 39, at 20.

¹¹⁸ See *id.*

¹¹⁹ Effective methods used for the notification of the households are discussed by the FNS of the USDA. See *USDA Direct Certification Report*, *supra* note 37, at 24-25.

¹²⁰ NSLA § 9(b)(5), 42 U.S.C. § 1758.

¹²¹ *USDA Eligibility Manual for School Meals*, *supra* note 4, at 23.

¹²² Kate Jesberg, *APS School Lunch: Room for Improvement in Policy and Practice 2* (Feb. 2009), available at www.nmpovertylaw.org/Document-APS%20School%20Lunch%20Room%20for%20Improvement%20in%20Policy%20and%20Practice-Kate%20Jesberg-2009-02-25.doc. at 2.

¹²³ *Id.* at 2-3

¹²⁴ 7 C.F.R. § 245.6(f).

¹²⁵ 7 C.F.R. § 245.6(a)(2).

¹²⁶ In addition to language barriers, illiteracy concerns also exist; these are significantly more difficult to address in a timely manner with respect to a temporary process.

¹²⁷ Documents and Forms for the National School Lunch Program, Wisconsin Department of Public Instruction, available at <http://dpi.wi.gov/fns/fincou1.html> (last visited May 8, 2009).

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- ¹²⁸ See SFPS, *Free and Reduced Price Lunch*, available at <http://www.sfps.k12.nm.us/education/components/docmgr/default.php?sectiondetailid=3248> (last visited May 8, 2009).
- ¹²⁹ Telephone Interview with Judi Jaquez, R.D., SFPS Director of Student Nutrition (May 4, 2009). Judi Jaquez, R.D., can be reached by writing to 2600 Cerrillos Rd., Santa Fe, NM 87505 or by calling (505) 467-3600.
- ¹³⁰ *Id.*
- ¹³¹ See 7 C.F.R. § 245.5 (2009); *USDA Eligibility Manual for School Meals*, *supra* note 4, at 7.
- ¹³² N.M. Pub. Educ Dep't, Student Nutrition Bureau, *Agreement for New Program Participation Child Nutrition Program*, <http://www.ped.state.nm.us/nutrition/applicationAgreements.html#AANewPrg> (last visited May 8, 2009).
- ¹³³ See Valencia County News-Bulletin.com., *Rising Lunch Prices Affect Ability to Pay* (Feb. 2009), <http://www.news-bulletin.com/news/87131-02-28-09.html>.
- ¹³⁴ Telephone Interview with Judi Jaquez, R.D., SFPS Director of Student Nutrition (May 4, 2009).
- ¹³⁵ *Id.*
- ¹³⁶ See San Diego 6, *School Lunch Program Changed in Chula Vista* (Mar. 2009), <http://www.sandiego6.com> (search for "School Lunch Program Changed in Chula Vista"). SFPS is currently working with a company to develop a web-based system that will allow credit and debit card school lunch payments to be made through the district's webpage.
- ¹³⁷ *Id.* A Web-based notification system, however, may not necessarily be the best method if households do not have regular access to the Internet. See section III.C, *supra*.
- ¹³⁸ Press Release, APS Food & Nutrition Servs., *New APS Meal Charging Policy Goes Into Effect January 5, 2009, Students Will Be Limited in the Number of Meals They Can Charge* (Dec. 10, 2008), available at http://apsfacilities.org/nutrition/whats_happening/nu_press_2/article.php?id=66.
- ¹³⁹ See N.M. *Guidance Manual for School Meals*, *supra* note 4, at 2.
- ¹⁴⁰ See USDA Food & Nutrition Serv., *National School Lunch Program* (July 2008), available at <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactsheet.pdf> (describing federal nutritional requirements that no more than 30 percent of an individual's calories come from fat, and less than 10 percent from saturated fat). Regulations also establish a standard for school lunches to provide one-third of the RDA of protein, vitamin A, vitamin C, iron, calcium, and calories. *Id.*
- ¹⁴¹ See Candace Bos & Sharon Vaughn, *Strategies for Teaching Students with Learning and Behavior Problems* (6th ed. 2005).
- ¹⁴² See Carol Pogash, *Free Lunch Isn't Cool, So Some Students Go Hungry*, N.Y. Times, Mar. 1, 2008.
- ¹⁴³ See Bos & Vaughn, *supra* note 141.
- ¹⁴⁴ *Id.*
- ¹⁴⁵ 42 U.S.C. § 1758(b)(10).
- ¹⁴⁶ N.M. Pub. Educ. Dep't, Student Nutrition Bureau, *Agreement for New Program Participation, Child Nutrition Program*, <http://www.ped.state.nm.us/nutrition/applicationAgreements.html#AANewPrg>.
- ¹⁴⁷ Susan M. Bryan, *Schools Cut Free Lunch Programs*, USA Today, Feb. 25, 2009, available at http://www.usatoday.com/news/education/2009-02-25-free-lunch_N.htm.

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- ¹⁴⁸ See Cheryl Ross, *Portsmouth Schools Left Holding the Bag on \$260,000 in Charged Student Meals*, Virginia-Pilot, June 4, 2008, available at <http://hamptonroads.com/2008/06/portsmouth-schools-left-holding-bag-260000-charged-student-meals> (stating that a board member reviewing the alternative lunch program was concerned that participating children would “be singled out and made fun of”).
- ¹⁴⁹ See Jesberg, *supra* note 122, at 2.
- ¹⁵⁰ See 42 U.S.C. § 1759(a).
- ¹⁵¹ See 7 C.F.R. § 245.9 (2009). The *USDA Direct Certification Report*, *supra* note 37, at 13, suggests, that in the school year 2007/2008, 53,200 of 85,200 SNAP-participating children went to Provision 2 or Provision 3 schools.
- ¹⁵² *Id.* (“[C]hildren who participate in school nutrition programs have superior nutrition intake compared to those who do not, regardless of income.”)
- ¹⁵³ Minnesota Dep’t of Children, Families & Learning, *Provisions 2 and 3: Universal Meals Program*, available at http://fns.state.mn.us/FNSProg/PDFAllProg/Resources/Prov2_3Man.PDF (last visited May 8, 2009).
- ¹⁵⁴ USDA Food & Nutrition Serv., *Provisions 1, 2 and 3 Fact Sheet*, http://www.fns.usda.gov/cnd/Governance/prov-1-2-3/Prov1_2_3_FactSheet.htm (last visited Jul. 13, 2009).
- ¹⁵⁵ Food and Research Action Center, *Provision 2 of the National School Lunch Act* (2001), available at <http://www.frac.org/pdf/provision2.PDF>.
- ¹⁵⁶ See California Food Policy Advocates, *Provisions 2 & 3 School Meals* (2001), available at <http://www.cfpa.net/p2/provisions2&3.pdf> (hereinafter California Food Policy Advocates).
- ¹⁵⁷ *Id.*
- ¹⁵⁸ See *id.*
- ¹⁵⁹ *Id.*
- ¹⁶⁰ *N.M. Guidance Manual for School Meals*, *supra* note 4, at 35, suggests a participation-rate of at least 85% in free and reduced price meals for participation in Provision 2. Without further reference, the New Mexico Center on Law & Poverty white paper, *APS School Lunch – Room for Improvement in Policy & Practice*, February 2009, at 4, available at <http://www.endnmhunger.org/APSSchoolLunches.pdf>, suggests that APS requires a threshold of 90% whereas generally a threshold of 70-75% would be applied nationwide.
- ¹⁶¹ 7 C.F.R. 245.9(c)
- ¹⁶² See Wash. State Dep’t of Health, *Reduced-Price School Meal Co-Pay Elimination Continues to Increase Participation*, <http://depts.washington.edu/waaction/action/n2/a1.html> (last visited June 30, 2009).
- ¹⁶³ See *supra* notes 4-5 and accompanying text.
- ¹⁶⁴ Federal subsidy figures per the Federal Register Vol. 73, No. 130 dated July 7, 2008 are \$2.59 for free lunch and \$2.19 for reduced price lunch assuming a combined 60% or greater combined participation. Prices are effective from July 1, 2008 through June 30, 2009.
- ¹⁶⁵ The source for the average daily paid lunch participation figure is the Food Research and Action Center – New Mexico Federal Nutrition Program data for the 2007-08 school year, updated February 2009, http://www.frac.org/State_Of_States/2008/states/NM.pdf. This average daily paid lunch data is currently unavailable for the 2008-09 school year, and was thus prorated based on a similar percentage breakdown of total school lunch enrollment for 2007-08. The source for the reduced price and free lunch data is the New

Mexico Public Education Department – *School Fact Sheets for Free/Reduced Lunch* for 2007-08 and 2008-09, <http://www.ped.state.nm.us/IT/schoolFactSheets.html>.

¹⁶⁶ New Mexico Public Education Department. *School Fact Sheets – Free/Reduced Lunch*. 2007-08 and 2008-09, <http://www.ped.state.nm.us/IT/schoolFactSheets.html>.

¹⁶⁷ Albuquerque Public Schools – News Release. “School Meal Charging Policy Effective Jan. 5,” November 18, 2008.

¹⁶⁸ Albuquerque Public Schools Food & Nutrition Services. *Job Description - Cafeteria Substitute*, http://apsfacilities.org/nutrition/nu_emp_opps/nu_curr_open/cafe_sub/jobdescription (last visited June 3, 2009).

¹⁶⁹ This average wage rate may be higher depending on individual school district wage rates, individual school wage rates and/or the tenure of certain employees.

¹⁷⁰ Brown, *supra* note 33.

¹⁷¹ Community Food Security Coalition, Executive Summary, *available at* <http://www.foodsecurity.org/healthy.html> (last visited May 8, 2009).

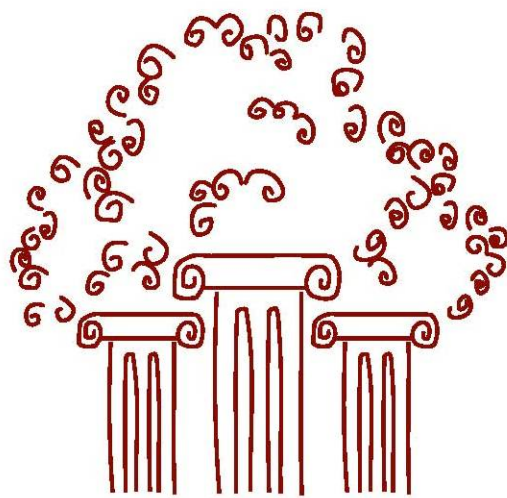
¹⁷² *Id.*

¹⁷³ Hamon, Alison, *Farm to School: Case Studies and Resources for Success*, National Farm to School Program, 12 (2004), *available at* <http://foodroutes.org/doclib/243/FarmtoSchoolSuccess.pdf>.

¹⁷⁴ *See* 42 U.S.C. §§ 1759a, 1766a.

¹⁷⁵ The 2004 Reauthorization Act provides a one time appropriation of \$9 million to be used to assist States in implementing mandatory direct certification and other provisions related to certification and verification of students’ eligibility to receive free and reduced price meal benefits. *See* USDA, *Memorandum to State Agencies* (Mar. 13, 2009), *available at* http://www.fns.usda.gov/CND/Grants/FY09certgrant_cover.pdf. The FNS is currently soliciting proposals from state agencies for a fourth round of funding to aid in implementing direct certification, direct verification, electronic application, electronic signatures, and household applications. *See* Neuberger, *supra* note 53, at 10, 26-27. Subject to availability, the 2009 funding will be awarded on a competitive basis with priority given to those state agencies that did not receive a grant previously. *Id.* Tennessee recently received a \$60,000 USDA grant to further expand its direct certification capacity. *Id.* at 24. The Washington Education Department was awarded a \$181,348 USDA grant to develop an entirely new database for private school students. *Id.* at 27.

¹⁷⁶ Further information on USDA grants and application materials are available on the USDA's website, <http://www.fns.usda.gov/CND/Grants.htm> (last visited May 8, 2009).



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Special thanks to Peter Renna at The Printer's Press in Albuquerque, New Mexico for donating a significant portion of the costs to print this report.